

CHAPTER 16

Zoning

- Article I General Provisions**
- Sec. 16-1-10 Short title
 - Sec. 16-1-20 General purpose
 - Sec. 16-1-30 Specific purposes
 - Sec. 16-1-40 Authority
 - Sec. 16-1-50 Applicability
 - Sec. 16-1-60 Jurisdictional area
 - Sec. 16-1-70 Schedule of fees
 - Sec. 16-1-80 Coordination with other ordinances
 - Sec. 16-1-90 Notice of public hearing
 - Sec. 16-1-100 Additional criteria
 - Sec. 16-1-110 Rules of language construction
 - Sec. 16-1-120 Word interpretation
 - Sec. 16-1-130 Definitions
- Article II Zoning District Regulations**
- Sec. 16-2-10 Zoning Map and boundaries of zone districts
 - Sec. 16-2-20 Vacations
 - Sec. 16-2-30 Zoning districts
 - Sec. 16-2-40 Use classifications
 - Sec. 16-2-50 Use schedules for zoning districts
 - Sec. 16-2-60 Yard and bulk requirements
 - Sec. 16-2-70 Growing marijuana in residential dwelling units
- Article III Nonconforming Uses and Buildings**
- Sec. 16-3-10 Nonconformance
 - Sec. 16-3-20 Expansion or enlargement
 - Sec. 16-3-30 Repairs and maintenance
 - Sec. 16-3-40 Restoration or replacement
 - Sec. 16-3-50 Discontinuance
 - Sec. 16-3-60 Nonconforming lots on record
 - Sec. 16-3-70 Change in nonconforming use
 - Sec. 16-3-80 Construction prior to ordinance passage
 - Sec. 16-3-90 Special exceptions to provisions on expansion of nonconforming uses
- Article IV Special Review Uses**
- Sec. 16-4-10 Purpose
 - Sec. 16-4-20 Application
 - Sec. 16-4-30 Coordination with planned unit development plan approval
 - Sec. 16-4-40 Application review
 - Sec. 16-4-50 Issuance of a special review use permit
 - Sec. 16-4-60 Criteria and conditions for approval
 - Sec. 16-4-70 Alterations of approved uses
 - Sec. 16-4-80 Approved uses existing prior to effective date of provisions
 - Sec. 16-4-90 Control of special review use after approval
- Article V Planned Unit Development**
- Sec. 16-5-10 Purpose
 - Sec. 16-5-20 Scope and applicability
 - Sec. 16-5-30 Submittal requirements

- Sec. 16-5-40 Review process
- Sec. 16-5-50 Criteria of approval
- Sec. 16-5-60 Lapse of approval
- Sec. 16-5-70 Recordation of plan
- Sec. 16-5-80 Construction procedures and building permits
- Sec. 16-5-90 Amendments to approved PUD plans
- Sec. 16-5-100 Enforcement of plan
- Sec. 16-5-110 Control of development after completion

Article VI Off-Street Parking and Loading

- Sec. 16-6-10 Parking; general requirements
- Sec. 16-6-20 Parking standards designated for each use
- Sec. 16-6-30 Loading; school sites
- Sec. 16-6-40 Loading; merchandise, materials or supplies
- Sec. 16-6-50 Maintenance restrictions
- Sec. 16-6-60 Multiple-use requirements
- Sec. 16-6-70 City Council may increase or reduce number of required parking spaces
- Sec. 16-6-80 Location of spaces
- Sec. 16-6-90 Use of parking spaces
- Sec. 16-6-100 Setbacks
- Sec. 16-6-110 Plans required for building permit
- Sec. 16-6-120 Design requirements
- Sec. 16-6-130 Completion time for improvements

Article VII General Regulations

- Sec. 16-7-10 Reasonable interpretation
- Sec. 16-7-20 Accessory uses
- Sec. 16-7-30 Home occupations
- Sec. 16-7-40 Maintenance of requirements
- Sec. 16-7-50 Exception to lot size requirements
- Sec. 16-7-60 Exceptions to yard requirements
- Sec. 16-7-70 Vision clearance areas
- Sec. 16-7-80 Screening
- Sec. 16-7-90 Principal buildings on same lot
- Sec. 16-7-100 Renting of rooms
- Sec. 16-7-110 Temporary uses
- Sec. 16-7-120 Child care facility outdoor play areas
- Sec. 16-7-130 Salvage yards, kennels and feedlots
- Sec. 16-7-140 Drive-in facilities
- Sec. 16-7-150 Separation of certain uses
- Sec. 16-7-160 Exception to building height regulations
- Sec. 16-7-170 Unobstructed yards
- Sec. 16-7-180 Accessory buildings
- Sec. 16-7-190 Projections into required yards
- Sec. 16-7-200 Cemeteries
- Sec. 16-7-210 Usable open space
- Sec. 16-7-220 Fences, hedges and walls
- Sec. 16-7-230 Horses
- Sec. 16-7-240 Lighting fixtures
- Sec. 16-7-250 Swimming pools
- Sec. 16-7-260 Mineral resources
- Sec. 16-7-270 Salvage yards, screening
- Sec. 16-7-280 Mobile homes
- Sec. 16-7-290 Special review uses; historic landmarks

- Sec. 16-7-300 Site plan and survey requirements
- Sec. 16-7-310 Medical marijuana center
- Sec. 16-7-320 Sound amplification equipment in HDG or GGG zoning districts

Article VIII Board of Adjustment

- Sec. 16-8-10 Established
- Sec. 16-8-20 Appointment of members
- Sec. 16-8-30 Members; term; associate members
- Sec. 16-8-40 Chairperson
- Sec. 16-8-50 Removal from office
- Sec. 16-8-60 Number of votes required for case approvals
- Sec. 16-8-70 Rules of conduct; meetings
- Sec. 16-8-80 Records
- Sec. 16-8-90 Appeals
- Sec. 16-8-100 Appeal stays actions
- Sec. 16-8-110 Powers

Article IX Administration and Enforcement

- Sec. 16-9-10 City Council powers
- Sec. 16-9-20 Planning Commission duties
- Sec. 16-9-30 Board of Adjustment duties
- Sec. 16-9-40 Historical Preservation Commission duties
- Sec. 16-9-50 Zoning Administrator responsibility
- Sec. 16-9-60 Zoning Administrator powers and duties
- Sec. 16-9-70 Building permits
- Sec. 16-9-80 Certificate of occupancy
- Sec. 16-9-90 Use permits
- Sec. 16-9-100 No permits prior to subdivision
- Sec. 16-9-110 Temporary permits
- Sec. 16-9-120 Time limit on variance permits
- Sec. 16-9-130 Liability for damages
- Sec. 16-9-140 Interpretation
- Sec. 16-9-150 Violations
- Sec. 16-9-160 Penalty for violation

Article X Amendments

- Sec. 16-10-10 Authorization to initiate amendments
- Sec. 16-10-20 General procedure
- Sec. 16-10-30 Special procedure
- Sec. 16-10-40 Exception for general revision
- Sec. 16-10-50 Declaration of policy for rezoning
- Sec. 16-10-60 Minimum size of parcel
- Sec. 16-10-70 Approval of amendment to zoning map
- Sec. 16-10-80 Annexed territory
- Sec. 16-10-90 Records of amendments

Article XI Historic Preservation

- Sec. 16-11-10 Intent
- Sec. 16-11-20 Purpose
- Sec. 16-11-30 Definitions
- Sec. 16-11-40 District boundaries and landmarks
- Sec. 16-11-50 Certificate of appropriateness
- Sec. 16-11-60 Demolition
- Sec. 16-11-70 Compliance with other regulations
- Sec. 16-11-80 Limitations of review

- Sec. 16-11-90 Application procedure
- Sec. 16-11-100 Waiving of requirements; requiring additional information
- Sec. 16-11-110 Time limitations for motion on applications
- Sec. 16-11-120 Modifications of applications
- Sec. 16-11-130 Emergency aspects
- Sec. 16-11-140 Notice
- Sec. 16-11-150 Administrative approvals for paint colors and roofing materials and colors
- Sec. 16-11-160 Expiration of certificate of appropriateness
- Sec. 16-11-170 Amended plans
- Sec. 16-11-180 Appeal for denial of application
- Sec. 16-11-190 Appeal filing procedure
- Sec. 16-11-200 Basis of appeal
- Sec. 16-11-210 Appeal hearings
- Sec. 16-11-220 Penalties

Article XII Ridgeline Development Overlay District

- Sec. 16-12-10 Intent
- Sec. 16-12-20 Purpose
- Sec. 16-12-30 Overlay District established
- Sec. 16-12-40 Exemptions
- Sec. 16-12-50 General provisions
- Sec. 16-12-60 Application requirements
- Sec. 16-12-70 Criteria for approval

ARTICLE I

General Provisions

Sec. 16-1-10. Short title.

This Chapter and map shall be known as the City of Central Zoning Ordinance. (Prior code 16-1)

Sec. 16-1-20. General purpose.

This Chapter has as its general purpose the promotion of the health, safety, morals and general welfare of the City. (Prior code 16-2)

Sec. 16-1-30. Specific purposes.

The Zoning Ordinance is in substantial accordance with the Comprehensive Development Plan and is designed to lessen congestion in the streets; promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. This Chapter is made with reasonable consideration, among other things, as to the character of the district and its particular suitability for particular uses, and with a view to conserving the value of land and buildings and maintaining and enhancing the quality of life throughout the City by encouraging the most appropriate use of land. (Prior code 16-3)

Sec. 16-1-40. Authority.

The Zoning Ordinance has been prepared and enacted in accordance with the Home Rule Charter as well as the applicable state statutes and is hereby declared to be in accordance with all provisions of these statutes. (Prior code 16-4)

Sec. 16-1-50. Applicability.

(a) No land or structure shall be used or developed except in accordance with these regulations. The provisions of this Chapter shall be applicable to:

(1) All private persons, entities, agencies and corporations; and

(2) The City or its agencies or departments, the County or its agencies or departments, the City of Black Hawk or its agencies or departments, public utilities, school districts, intergovernmental authorities, special or metropolitan districts and all similar governmental or quasi-governmental entities.

(b) The location and extent review process set forth in Section 31-23-209, C.R.S., does not apply within the boundaries of the City. (Prior code 16-5; Ord. 14-04 §1, 2014)

Sec. 16-1-60. Jurisdictional area.

The territorial jurisdiction of this Chapter shall include all land located within the legal boundaries of the City and, limited only to control with reference to a major street plan and not otherwise, shall

also include all land lying within three (3) miles of the corporate limits of the City and not located within any other municipality; except that, in the case of any of such non-municipal land lying within five (5) miles of the City and another municipality, the jurisdiction of the City shall terminate at a boundary line equidistant from the respective corporate limits of the City. This Chapter shall also apply to land in the process of annexation for which an annexation petition has been filed. (Prior code 16-6)

Sec. 16-1-70. Schedule of fees.

There shall be a zoning amendment fee required to cover the costs of City processing of applications filed under this Chapter. Said fee shall be as established by resolution of the City Council. (Prior code 16-7)

Sec. 16-1-80. Coordination with other ordinances.

It is the intent of this Chapter that it be implemented in coordination with other City ordinances applicable to land use and development, including the City Zoning Ordinance, Historical Preservation Ordinance, Floodplain Ordinance, Building Code and other such ordinances and regulations. (Prior code 16-8)

Sec. 16-1-90. Notice of public hearing.

Whenever notice of public hearing is required under this Chapter, said notice shall be published in a newspaper of local circulation and mailed to all owners of real property within three hundred (300) feet of all property lines of the land included in the application. Further notice shall be given by posting notice on the property adjacent to the nearest public right-of-way as approved by the City Manager. All mailings, postings and publications shall occur at least fifteen (15) days prior to the public hearing. (Prior code 16-9)

Sec. 16-1-100. Additional criteria.

Additional special review use and Planned Unit Development review criteria may be established and application-specific information may be required by the Planning Commission and City Council as they deem appropriate and necessary. (Prior code 16-10)

Sec. 16-1-110. Rules of language construction.

For the purpose of this Chapter and when not inconsistent with the context:

- (1) Words used in the present tense include the future.
- (2) Words in the singular include the plural.
- (3) Words in the plural include the singular.
- (4) The masculine includes the feminine.
- (5) The word *shall* is mandatory and not directory.

(6) The word *may* is permissive.

(7) The particular controls the general. (Prior code 16-11)

Sec. 16-1-120. Word interpretation.

Certain words and phrases are defined; and certain provisions shall be interpreted as herein set out, when not inconsistent with the context. The word *building* includes the word *structure*; the word *used* includes the words *occurred, arranged, designed or intended to be used*; and the word *construct* includes the words *erect, reconstruct, alter, move in and move upon*. The phrase *development agreement* includes the phrases *written agreement, planned unit development agreement and special review use agreement*. (Prior code 16-12)

Sec. 16-1-130. Definitions.

As used in this Chapter, the following words shall be construed to have the meanings defined below:

Accessory use or building means a use naturally and normally incidental to a principal use, and complying with all of the following conditions:

- a. Is clearly incidental and customary to and commonly associated with the operation of the principal use;
- b. Is operated and maintained under the same ownership and on the same property as the principal use, except as otherwise provided in this Chapter;
- c. Includes only those structures or structural features consistent with the principal use; and
- d. May include home occupations, as defined.

Adult amusement or entertainment means amusement or entertainment which is distinguished or characterized by an emphasis on material depicting, describing or relating to specified sexual activities or specified anatomical areas.

Alley means a minor way which is used primarily for vehicular service access to the rear or side of properties otherwise abutting on a street.

Animal clinic means a veterinary establishment for the treatment of large and small animals on an outpatient basis only. No provisions are provided for overnight accommodations for animals.

Animal hospital for large animals means a veterinary establishment whose purpose is to provide inpatient and outpatient services to animals such as cows, horses, buffalo, pigs, sheep, goats, donkeys, mules and other animals of similar size.

Animal hospital for small animals means a veterinary establishment whose purpose is to provide inpatient and outpatient services to animals such as cats, dogs and other small domestic animals.

Area, minimum lot means the total area within the property lines of the lot, excluding adjacent rights-of-way.

Auto salvage and wrecking means an open or enclosed area on which inoperative vehicles, machinery or related materials of any type are stored or dismantled.

Balcony, open means an unroofed, cantilevered platform extending not more than four (4) feet from the wall of a building, enclosed only by an open railing.

Basement (cellar) means a story having all or more than one-half (½) of its height below grade.

Bed and breakfast means a single-family residential building which provides temporary lodging (other than a hotel or motel) compatible with the neighborhood providing:

- a. Temporary lodging for guests for periods of twenty-eight (28) days or less;
- b. In six (6) or fewer rental guest rooms, none of which contain cooking facilities;
- c. For twelve (12) or fewer guests at any given time;
- d. Only the breakfast meal for the guests; and
- e. A host residing on the premises, or the bed and breakfast use will be conducted as an extension of an existing, approved bed and breakfast, and the extension meets the following additional criteria:
 1. Located within five hundred (500) feet of the primary bed and breakfast.
 2. Owned and managed by the owner of the primary bed and breakfast.
 3. The combination of the primary and extension bed and breakfast uses complies with the intent and conditions expressed in Subparagraphs a. through e. above.

Boarding or rooming house means a building other than a hotel, motel or bed and breakfast where, for compensation and by prearrangement for definite periods lasting one (1) week or longer, meals and/or lodging are provided for three (3) or more persons, but not exceeding twenty (20) persons, provided that such persons are not members of the owner's or operator's immediate family.

Bookstore, adult means an establishment having as a substantial or significant portion of its stock in trade, books, magazines and other periodicals and goods and items held for sale which are distinguished or characterized by their emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas or an establishment with a segment or sections devoted to the sale or display of such material.

Building means any permanent structure built for the shelter or enclosure of persons, animals, chattels or property of any kind excluding advertising sign boards or fences.

Building coverage means any area of a portion of a lot which is covered by all buildings on that lot.

Building height means the vertical distance from grade plane to the average height of the highest roof surface.

Building Official means the Building Official of the City.

Business and professional office means the office of an engineer, dentist, doctor, attorney, real estate broker, insurance broker, architect or other similar professional person; and any office used primarily for accounting, correspondence, research, editing or administration.

Cafe, restaurant or cafeteria means a commercial eating establishment where snacks or meals are vended for consumption indoors on the premises.

Change in use occurs when:

- a. The parking is inadequate for the new use;
- b. The new use is an expansion in size or impact of a nonconforming use;
- c. The new use constitutes an activity included under a different use group in Section 16-2-50 of this Chapter and the new use is not similar in operation to the previous use, including without limitation hours of operation, parking needs, trips generated, number of employees and noise impact on adjacent properties; or
- d. The new use adds additional dwelling units or requires additional parking.

Child care center means a facility, by whatever name known, which is maintained for the whole or a part of a day for the care of seven (7) or more children under the age of sixteen (16) years and not related to the owner, operator or manager thereof, whether such facility is operated with or without compensation for such care and with or without stated educational purposes. The term includes facilities commonly known as day care centers, day nurseries, nursery schools, kindergartens, preschools, play groups, day camps, summer camps and centers for mentally retarded children; and includes those facilities which give twenty-four-hour care for dependent and neglected children, and those facilities for children under the age of six (6) years with stated educational purposes operated in conjunction with a public, private or parochial college or a private or parochial school; except that the term shall not apply to any kindergarten maintained in connection with a public, private or parochial elementary school system of at least six (6) grades. A *small child care center* shall be a child care center with no more than six (6) children. A *neighborhood child care center* shall be a facility with no more than twelve (12) children. In addition, all child care centers shall comply with and conform to rules and regulations set forth by the Colorado Department of Social Services.

Clinic means offices for one (1) or more physicians, surgeons, dentists or other practitioners of the healing arts, but does not include rooms for the abiding of patients.

Club means any membership organization, including a lodge catering exclusively to members and their guests, whose facilities are limited to meeting, eating and recreational uses, and whose activities are not conducted principally for monetary gain. *Club* does not mean or include any membership organization that is prohibited by Subsection 6-9-40(c) of this Code.

Commercial amusement means an enterprise whose main purpose is to provide the general public with an amusing or entertaining activity, where tickets are sold or fees collected at the activity. *Commercial amusements* include miniature golf courses, arcades, Ferris wheels, children's rides, roller coasters, skating rinks, ice rinks and similar activities.

Common property means a parcel or parcels of land, together with the improvements thereon, the ownership, maintenance, use and enjoyment of which are shared by the owners and occupants of the individual building sites in planned unit developments or other described land areas.

Comprehensive development plan means the comprehensive development plan for the City which has been officially adopted to provide long-range development policies for the City and which includes, among other things, the plan for land use, land subdivision, circulation and public facilities.

Cooking facilities means standard, full size, major appliances normally found in kitchens used in the storage, preparation and cooking of meals. Small appliances such as microwave ovens, small refrigerators, coffee makers or similar devices, and areas for their use are not cooking facilities.

Courts and *courtyards* mean open, unoccupied spaces which are wholly or partially enclosed.

Density means the number of dwelling units per acre of land devoted to housing and related open space.

District means a section or sections of the City for which regulations governing the use of buildings and premises, the height of buildings, the size of yards and the intensity of use are uniform.

Domestic animals means animals confined primarily for the purpose of pleasure rather than for food or monetary gain.

Drive-in establishment means an establishment which is designed to provide, wholly or in part, service to customers while they remain in their automobiles parked upon the premises.

Dwelling, multi-family means a building occupied by two (2) or more families living independently of each other, but not including motels or hotels.

Dwelling, single-family means a detached principal building other than a mobile home designed for or used as a dwelling exclusively by one (1) family as an independent living unit.

Dwelling, two-family means a building having accommodations for and occupied exclusively by two (2) families living independently of each other.

Dwelling unit means one (1) room or rooms connected together constituting a separate, independent housekeeping establishment for owner occupancy or for rental or lease on a monthly or longer basis, physically separated from any other rooms or dwelling units which may be in the same structure, and served by not more than one (1) gas meter and one (1) electric meter.

Easement means authorization by a property owner for the use by the public, a corporation or persons of any designed part of his or her property for specific purposes.

Essential governmental or public utilities services means the erection, construction, alteration or maintenance by public utilities or municipal departments of underground or overhead gas, electrical, steam or water transmission or distribution systems, collection, communication or supplier-disposal systems; including poles, antennas, transmitters, wires, mains, drains, sewers, pipes, conduits, cables, fire-alarm boxes, police callboxes, traffic signals, hydrants and other similar equipment and accessories in connection therewith which are reasonably necessary for the furnishing of adequate service by such public utilities or municipal departments or commissions, or for the public health, safety or general welfare.

Family means a group of persons meeting the conditions in Subparagraph a. or b. below:

a. A group of persons living together as a single-dwelling unit who are related by blood, marriage or adoption, and a reasonable number of domestic servants; or

b. A group of not more than three (3) unrelated persons living together as a single-dwelling or housekeeping unit and who share the use and cost of common facilities. This group of persons should generally exhibit the same characteristics of other families in the neighborhood in the use of neighborhood facilities and the amount of noise generated.

Family care home means a facility for child care in a place of residence of a family or person for the purpose of providing family care and training for a child under the age of sixteen (16) years who is not related to an adult who resides in such home. Such facilities shall provide care and training for no more than six (6) children, as this number is set forth by the Colorado Department of Social Services in its rules and regulations. In addition, all shall comply with and conform to the rules and regulations set forth by the Colorado Department of Social Services.

Feedlot (livestock confinement area) means a place where cattle, calves, sheep, swine, horses, mules, goats, fowl and other animals are corralled, penned, tethered or otherwise caused to remain in pens or corrals and where feeding is by other than grazing.

Fence means a freestanding structure of metal, masonry, composition or wood, or any combination thereof, resting on or partially buried in the ground and rising above ground level, and used for confinement, screening or partition purposes.

Floodplain is defined as provided in the Floodplain Ordinance of the City.

Floor area means the area included within the outside walls of a building or portion thereof, including habitable tenant houses and attic space, but not including vent shafts, courts or uninhabitable areas below ground level or in attics.

Fraternity, sorority, dormitory or group student house means a building occupied by and maintained exclusively for students affiliated with an academic or vocational institution.

Frontage means that portion of a lot, parcel, tract or block abutting upon a street or other right-of-way.

Gaming means the use of slot machines, card games (video or otherwise) of blackjack and poker or as otherwise defined by the State relative to limited stakes gaming.

Grade, depending upon usage, means the elevation of the ground at the base of a building sign or fence, or the slope or degree of inclination of a street, sidewalk, ramp or ground surface.

Grade plane means a reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, where the lot line is more than six (6) feet from the building, between the building and a point six (6) feet from the building.

Gross square footage (GSF) means the total floor area designed for occupancy and use, including basements, mezzanines, stairways and upper floors, if any, expressed in square feet and measured from the center line of joint partitions and from outside wall faces.

Guest house means an accessory structure which is physically detached from a single-family dwelling unit, is serviced through the same utility meters or connections as the principal use, and is intended for temporary occupancy by visitors to the family residing in the single-family dwelling.

Guest room means a room in a hotel, motel, bed and breakfast or boarding house offered to the public for compensation, used only for temporary occupancy.

Halfway house means a place for helping people adjust to society after being imprisoned, hospitalized, etc.

Hedge means a fence or boundary formed by a dense row of shrubs or low trees.

Historic Preservation Commission means the City Historic Preservation Commission.

Home occupation means a business use or activity conducted in a dwelling unit or on the same premises as a dwelling unit subject to the provisions of this Chapter.

Homeowners' association means an incorporated, nonprofit organization operating under recorded land agreements through which:

- a. Each lot and/or homeowner in a planned unit development or other described land area is automatically a member;
- b. Each lot is automatically subject to charge for a proportionate share of the expenses for the organization's activities, such as maintaining a common property; and

- c. Such charge, if unpaid, becomes a lien against the property.

Hospital means any building or portion thereof used for the accommodation and medical care of sick, injured or infirm persons, but not including sanitariums, clinics, rest homes, convalescent homes, nursing homes and homes for the aged.

Hotel means a facility offering transient lodging accommodations on a daily rate to the general public and providing additional services, such as restaurants, meeting rooms and recreational facilities.

Impound lot means a parking lot or structure used for the storage of impounded vehicles.

Irrigation ditch or canal means a channel designed to transport irrigation water.

Junk or salvage means scrap iron, tin, brass, copper, lead or zinc, and all other scrap metals and their alloys; bones; rags or old cotton; used cloth, rubber, rope, tinfoil; bottles; machinery, tools, appliances, fixtures, utensils, boxes or crates, pipe or pipe fittings, automobile or airplane parts, other manufactured goods that are so worn, deteriorated or obsolete as to make them unusable in their existing condition; and all other products subject to being dismantled or recycled.

Junkyard means any lot, parcel or tract used for the storage, keeping, sale or abandonment of junk and/or for the dismantling, demolition or abandonment of automobiles, or other junk or parts thereof.

Kennel means a lot or building in which four (4) or more dogs or cats at least four (4) months of age are kept commercially for board, propagation or sale.

Laundromat means an establishment where the public may wash in a machine of the home automatic type furnished by the establishment, as distinguished from a public laundry.

Laundry means a building or premises where public laundry work is done directly for the public, by cleaning and ironing soiled and used clothes on orders received from members of the public as customers.

Lot means a parcel of land of at least a sufficient size to meet minimum requirements for use, coverage and area, and to provide required yards and other open spaces. Such lot shall have at least thirty-five (35) feet of frontage on an improved public street, or on an approved private street (of a minimum width sufficient to accommodate emergency vehicles), and may consist of the following, provided that in no case of division or combination shall any residual lot or parcel be created which does not meet the requirements of this Chapter:

- a. A single lot of record;
- b. A portion of a lot of record;
- c. A combination of complete lots of record, complete lots of record and portions of lots of record, or portions of lots of record;
- d. A parcel of land described by metes and bounds;

- e. A patented mining claim; and
- f. City title mining claims and tracts.

Lot area means the total horizontal area within the lot lines of a lot.

Lot coverage means the percentage of the total lot area covered by buildings.

Lot depth means the average horizontal distance between front and rear lot lines.

Lot, double frontage means a lot which runs through a block from street to street and which has nonintersecting sides abutting on two (2) or more streets or other rights-of-way.

Lot, interior means a lot other than a corner lot.

Lot line, front means the property line dividing a lot from the right-of-way of the street. For a corner lot, the shortest street right-of-way line shall be considered as the front line. For a corner lot, double frontage lot or other questionable situations, the front lot line shall be established by the Zoning Administrator based upon architectural character of nearby properties, access and other appropriate considerations.

Lot line, rear means the property line opposite the front lot line.

Lot line, side means any lot line other than a front or rear lot line.

Lot width means the distance on a horizontal plane between the side lot lines of a lot, measured at right angles to the line establishing the lot depth at the established building setback line.

Marijuana means all parts of the plant of the genus *Cannabis*, whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin, including marijuana concentrate. *Marijuana* does not include industrial hemp, nor does it include fiber produced from its stalks, oil or cake made from the seeds of the plant or the sterilized seed of the plant which is incapable of germination or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other product.

Medical marijuana center means a premises licensed pursuant to the Colorado Medical Marijuana Code to operate a business described in Section 12-43.3-402, C.R.S., that sells medical marijuana to registered patients or primary caregivers as defined in Section 14 of Article XVIII of the Colorado Constitution, but is not a caregiver.

Mobile home means any vehicle or similar portable structure originally constructed to have no foundation other than wheels, jacks or skirting and so designed or constructed to permit occupancy as living or sleeping quarters and having been issued a manufacturer's statement of origin.

Mobile home park is defined as follows:

- a. Any tract of land on which three (3) or more mobile homes are parked.

b. Any tract of land used commercially for parking space for one (1) or more transient mobile homes.

c. Trailer sales areas shall not be considered mobile home parks.

d. The use or occupancy of three (3) or fewer mobile homes on a farm or ranch by persons employed on or owning the farm or ranch shall not be considered a mobile home park.

Mobile home space means a plot of ground within a mobile home park designed for the accommodation of one (1) mobile home.

Modular or manufactured home means any portable structure originally constructed to have no foundation other than facilities for placement or erection of the structure on site and designed or constructed to permit permanent occupancy as living quarters, and which must conform to the City Building Code.

Motel means a hotel which usually is arranged in such a manner that individual guest rooms are directly accessible from an automobile parking area.

Nonconforming building means a building or portion thereof legally built prior to the effective date of the ordinance codified herein or any amendment thereto, which does not conform with the regulations of the district in which it is located.

Nonconforming use means land or a building lawfully occupied prior to the effective date of the ordinance codified herein or any amendment thereto, by a use which does not conform with the regulations of the district in which it is located.

Nursing home means premises occupied by four (4) or more sick, infirm or convalescent persons who are attended by nurses caring for their physical and mental requirements.

Off-street loading space means a space located outside of a public street or alley for the discharge of passengers, or a space directly accessible to the building it serves for bulk pickups and deliveries by delivery vehicles.

Off-street parking area means any parking area located wholly within the limits of one (1) or more lots.

Open space means land which is free of structures which are not directly related to the use of the open space.

Ordinance means the City Zoning Ordinance.

Parking lot means an area, not within a building, where, as a principal use, motor vehicles may be stored for purposes of temporary, daily or overnight, off-street parking.

Parking space means a rectangular area not less than eight and one-half (8½) feet wide by eighteen (18) feet deep, along with maneuvering and access space necessary to park within the rectangle.

Parking structure means a building where, as a principal use, motor vehicles may be stored for purposes of temporary, daily or overnight, off-street parking.

Patient has the meaning provided in Section 14(a)(d) of Article XVIII of the Colorado Constitution, as further defined and regulated in Section 25-1.5-106, C.R.S., and 5 C.C.R. 1006-2.

Permit means a document issued by the City granting permission to perform an act or service which is regulated by the City.

Permitted use means a use specifically allowed in one (1) or more of the various districts without the necessity of obtaining a use permit.

Personal service shop means an establishment for the purpose of supplying limited personal services such as, but not limited to, barbershops, shoe shops, boot shops or beauty shops.

Photo studio, adult means an establishment which, upon payment of a fee, provides photographic equipment and/or models for the purpose of photographing specified anatomical areas.

Planned unit development means a project of a single owner or a group of owners acting jointly, involving a related group of residences, businesses or industries and associated uses, planned as a single entity and therefore subject to development and regulation as one (1) land use unit rather than as an aggregation of individual buildings located on separate lots. The planned unit development includes usable, functional open space for the mutual benefit of the entire tract; and is designed to provide variety and diversity through the variance of normal zoning and subdivision standards so that maximum long-

range benefits can be gained, and the unique features of the development or site preserved and enhanced while still being in harmony with the surrounding neighborhood. Approval of a planned unit development does not eliminate the requirements of subdividing.

Planning Commission means the City Planning Commission, also known as the City Planning and Zoning Committee.

Plat means a map of land hereon described and prepared as an instrument for recording with the County Clerk which depicts the boundaries of real estate interests.

Plat, preliminary means the preliminary map or maps of a proposed subdivision, drawn and submitted in accordance with the requirements of these regulations.

Premises is a general term which means part or all of any lot, parcel or tract, or part or all of any building, structure or group of buildings or structures located thereon.

Primary caregiver has the meaning provided in Section 14(1)(f) of Article XVIII of the Colorado Constitution, as further defined and regulated in Section 25-1.5-106, C.R.S., and 5 C.C.R. 1006-2.

Primary sewage treatment means removal of solids through a sedimentation process.

Principal use means the main use of land or of a structure as distinguished from a subordinate or accessory use.

Private horse stables means any area wherein a horse, mule and/or donkey is or are maintained for private, noncommercial recreation.

Private utility means any utility other than a municipally owned and operated utility, including telephone, electric and gas utilities, and other privately owned and operated utilities.

Professional office. See *Business and professional office.*

Property line means the boundary of any lot, parcel or tract as the same is described in the conveyance of such property to the owner; and does not include the streets or alleys upon which said lot, parcel or tract abuts.

Public hearing means a meeting called by a public body for which public notice has been given and which is held in a place at which the general public may attend to hear issues and to express their opinions.

Public horse stables means any area wherein a horse, mule and/or donkey is or are maintained for public, commercial recreation for hire or boarding for hire.

Recreational enterprise means a temporary outdoor amusement which in certain cases might be an appropriate use including, but not limited to, carnivals, expositions, fairs, rodeos, tent shows and similar enterprises.

Resort mobile home and/or tent camping park means any plot of ground which has been planned, improved or used for the placement of three (3) or more mobile homes for human habitation; and which furthermore meets all of the following conditions:

a. The principal business of the park is to supply parking spaces for mobile homes, motor homes and/or tent camping whose occupants are engaged in recreational activities such as fishing, hunting, boating or camping.

b. Mobile homes and motor homes accommodated do not exceed forty-five (45) feet in length.

c. Mobile homes and motor homes may be accommodated for no longer than three (3) consecutive months. Compliance with this provision requires that all mobile homes or motor homes vacate the premises for a minimum of thirty (30) days following occupancy for ninety (90) days, at any location within the park. In no event shall any such home be allowed to stay in the park longer than ninety (90) consecutive days and absence from the park shall entitle the occupant to begin a new ninety (90) day period of occupancy only if the home is removed from the park for at least thirty (30) days.

d. Notwithstanding the provisions of Subparagraph c. above, up to three units may be occupied for any length of time, provided that such homes are owned and occupied by the following persons: (1) One (1) home for the owners of the park; (2) One (1) home for the

manager of the park, if any; and (3) One (1) home for the assistant manager of the park, if any. All such homes must be occupied by the owners thereof and shall not be rented, except that the homes to be occupied by the manager and assistant manager may be owned by the owners of the park and rented to the manager or assistant manager. The spaces which may be occupied by the owners, manager, and assistant manager may not be located in an area visible from the City core.

e. If any owner or occupant desires to install skirting around the base of their mobile home or motor home, such skirting shall not be made of home made, scrap, or unsightly materials but must be made of materials manufactured specifically for that purpose. The City may require removal of any skirting or other structures which do not comply with this requirement.

f. No sheds, fences, or dog runs shall be allowed around or upon individual sites for mobile homes or motor homes.

g. Propane or other fuel tanks must be installed safely and in accordance with all applicable safety code requirements.

Retail means sale to the ultimate consumer for direct consumption and/or use and not for resale.

Right-of-way means the entire dedicated tract or strip of land a portion of which is to be used by the public for circulation or utilities.

Road. See *Street*.

Rooming unit means a room which provides minimal housing accommodations for a roomer, is arranged primarily for sleeping and study, and in which may be included a private bath; but such room shall not include any kitchen equipment such as a refrigerator, sink or cooking device.

Screening means decorative fencing, evergreen hedges or earth berms maintained for the purpose of concealing from view the area behind such screening.

Secondary sewage treatment means a method of sewage treatment in which a minimum of eighty-five percent (85%) of the biochemical-oxygen-consuming material is removed.

Service station means any premises where gasoline and other petroleum products and/or convenience items are sold and/or light maintenance activities such as engine tune-ups, emissions testing, lubrication, minor repairs and carburetor cleaning are conducted. *Service stations* shall not include premises where heavy motor vehicle maintenance activities such as engine overhauls, motor vehicle painting and body fender work are conducted.

Setback line means a line or lines designating the area outside of which buildings may not be erected.

Shopping center means a composite arrangement of shops and stores, developed as an integral unit, which provide a variety of goods and services to the general public.

Sign is as defined in the City Sign Ordinance.

Special review use means a use allowed in the indicated zoning district only with permission by the City Council in accordance with the basic purposes and intent of this Chapter.

Specified anatomical areas includes:

- a. Less than completely and opaquely covered human genitals, pubic region, female breasts below a point above the top of the aureole; and
- b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified sexual activities includes:

- a. Human genitals in a state of sexual stimulation or arousal;
- b. Acts of human masturbation, sexual intercourse or sodomy; and
- c. Fondling or other erotic touching of human genitals, pubic region, buttocks or female breasts.

Street means any street, avenue, boulevard, road, lane, parkway, viaduct, alley or other way for the movement of vehicular traffic which is an existing state, county or municipal roadway, or a street or way shown upon a plat, heretofore or hereafter dedicated and which includes the land between street lines, whether improved or unimproved, and may be comprised of pavement, shoulders, gutters, sidewalks, parking areas and other areas within the right-of-way.

Structurally altered means changes which increase, extend or enlarge the building or convert the existing building into a different structure or affect the form or character of an existing building or structural quality.

Theater, adult means a theater used for the presentation of material distinguished or characterized by an emphasis on material depicting, describing or relating to specified sexual activities.

Transit center means an area utilized by public or commercial carriers for pick-up or drop-off of passengers. In addition to loading and unloading areas, transit centers may include shelters, restrooms, benches, information offices, landscaping, lighting and other such facilities and appurtenances.

Use means the purpose for which land or a structure is designed, arranged, intended, occupied or maintained.

Use by right means a use which is listed as a use permitted by right in any given zone district in this Chapter. Uses permitted by right are not required to show need for their location.

Vacant property means land or platted lots with any of the following characteristics:

- a. Land parcels that are undeveloped;

- b. Land parcels with buildings that are abandoned and/or unoccupied; or
- c. Land parcels not generating sales tax or device fee revenues.

Variance means a legal modification of applicable zoning district provisions, such as yard, lot width, yard depth, sign, setback and off-street parking and loading regulations, granted due to the peculiar conditions existing within a single piece of property.

Vision clearance area means a triangular area on a lot at the intersection of two (2) streets or a street and a railroad, two (2) sides of which are lot lines measured from the corner intersection of the lot lines to a distance specified in the regulations. The third side of the triangle is a line across the corner of the lot joining the ends of the other two (2) sides. Where the lot lines and intersections have rounded corners, the lot lines will be extended in a straight line to a point of intersection.

Wildlife preserves means a property where sanctuary is provided for nondomesticated animals through protective restrictions.

Yard means an open space on the same lot with a building, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided herein. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard or the depth of a rear yard, the minimum horizontal distance between the lot line and the main building shall be used.

Yard, front means a yard extending across the front lot line between the side lot lines and being the minimum horizontal distance between the front lot line and the front of the main building.

Yard, rear means a yard extending across the rear lot line between the side lot lines, and being the minimum horizontal distance between the rear lot line and the rear of the main building. The rear yard shall in all cases be at the opposite end of the lot from the front yard.

Yard, side means a yard between the main building and the sideline of the lot, being the minimum horizontal distance between the building and the side lot line and extending from the front lot line to the rear lot line.

Zoning Administrator means the Zoning Administrator of the City. (Prior code 16-13; Ord. 12-16 §2, 2012; Ord. 13-03, 2013; Ord. 14-07 §4, 2014)

ARTICLE II

Zoning District Regulations

Sec. 16-2-10. Zoning Map and boundaries of zone districts.

(a) The zone symbols and the boundaries of zone districts shown on the map shown as being adopted January 20, 2004, is hereby designated as the "City of Central Zoning Map." The portion of the map being adopted by this Ordinance includes all areas of the City from the Kemper parking lot (inclusive) north. Said map and all the notations, references and other information shown thereon, are

as much a part of these regulations as if the matters and information set forth by said map were fully described herein. If any conflict between the map and the original ordinance making the change to the map exists, the original ordinance shall prevail.

(b) Boundaries. In determining the boundaries of zone districts shown on the map, the following rules shall apply:

(1) Unless otherwise indicated, the zone boundaries are the centerlines of physical streets, roads, highways, alleys, railroad rights-of-way and channelized waterways, or such lines extended. In cases where the platted and physical rights-of-way do not coincide, the Zoning Administrator will determine the location of the zone district boundary;

(2) In unsubdivided property, zone boundaries shall be determined by use of the scale on the map. A legal description acceptable to the Planning Commission shall be made available in the event of a controversy arising concerning zone district boundaries.

(3) Where a district boundary is shown by specific dimension as being located at any given distance from any right-of-way line, such specific dimension shall govern. (Prior code 16-31)

Sec. 16-2-20. Vacations.

Whenever any street, alley or other public way is vacated by official action of the City Council, the zoning district adjoining each side of such street, alley or public way shall be automatically extended to the center of such vacation, and all area included in the vacation shall then and henceforth be subject to all appropriate regulations of the extended district. (Prior code 16-32)

Sec. 16-2-30. Zoning districts.

In order to implement the purposes and provisions of this Chapter, the City hereby establishes the following districts:

(1) Resource District (RCE). The resource District is established to accommodate lower density residential, mining and related uses, and, through rezoning and/or the PUD process, for a wider range and density of uses in harmony with the area's abundant natural resources and mining heritage.

(2) Low-Density Residential (LDR). The Low-Density Residential District is established to accommodate predominantly single-family detached residential neighborhoods of a rural/mountain density and character.

(3) Medium-Density Residential (MDR). The Medium-Density Residential District is established to accommodate more dense, urban character residential neighborhoods as originally platted and developed in the City. Housing types to be included are single-family detached units on small lots. Single-family attached units, such as townhouses may be approved by special review use permit upon the condition that no more than one (1) unit is allowed per lot.

(4) High-Density Residential (HDR). The High-Density Residential District is established to accommodate multi-family residential neighborhoods, including apartment and condominium developments.

(5) Historic Downtown Gaming (HDG). The Historic Downtown Gaming District is established to accommodate limited stakes gaming establishments and related commercial uses within existing buildings and limited new construction. This district reflects the historically dense form of development of this neighborhood.

(6) Gregory Gulch Gaming (GGG). The Gregory Gulch Gaming District is established to accommodate limited stakes gaming establishments and related commercial uses within new construction and limited existing buildings. This district reflects the historically and architecturally diverse character of this neighborhood.

(7) Transitional (TSL). The Transitional District is established to accommodate a limited range of residential and low intensity commercial uses deemed to be generally compatible.

(8) Limited Community Commercial (LCC). The Limited Community Commercial District is intended to accommodate a range of generally compatible commercial uses, with negligible potential for adverse impact on adjacent or nearby uses.

(9) General Purpose Commercial (GPC). The General Purpose Commercial District is established to accommodate a wide range of commercial uses, including potentially incompatible uses, both indoor and outdoor, light industrial uses and public uses. (Prior code 16-33)

Sec. 16-2-40. Use classifications.

(a) Uses by right. A use by right is a use allowed in a district without special conditions other than those imposed upon other uses by right in the zone and specifically authorized by a building permit. A use by right requires no further approval from the City Council, although it will require Historic Preservation Commission approval.

(b) Special review use. A special review use requires the issuance of a special review use permit (see Section 16-9-90 of this Chapter). A special review use is a use which the City finds is essentially desirable to the community but the indiscriminate allowance of which use within a district or districts could cause traffic congestion, noise and general deleterious effects on the values, safety or health of the community. Therefore, the City considers each special review use on an individual basis with emphasis on the consideration of conditions of the specific site and its environs, and the specification of adequate and sufficient safeguards to ameliorate the impact of the use.

(c) Uses permitted by right and uses permitted by special review may be located in the same building. (Prior code 16-34)

Sec. 16-2-50. Use schedules for zoning districts.

The following schedule of permitted uses for the various districts is hereby adopted and declared to be a part of this Chapter, and may be amended in the same manner as any other part of this Chapter. Uses permitted by right are designated by "Y." Uses permitted by special review are

designated "R." Uses prohibited are designated "N." In each zoning district, any use category not expressly permitted shall be deemed excluded. If a question arises as to whether a specific use does or does not come within the following expressed use categories, any person may apply to the Board of Zoning Adjustment for a determination as to whether a specific use is expressly permitted.

AGRICULTURAL USE GROUPS									
	<u>RCE</u>	<u>LDR</u>	<u>MDR</u>	<u>HDR</u>	<u>HDG</u>	<u>GGG</u>	<u>TSL</u>	<u>LCC</u>	<u>GPC</u>
Commercial crop or animal production	R	N	N	N	N	N	N	N	N
Private horse stables	Y	R	N	N	N	N	N	N	N
Public horse stables	Y	N	N	N	N	N	N	N	R
Outdoor kennels	R	N	N	N	N	N	N	N	R
RESIDENTIAL USE GROUPS									
	<u>RCE</u>	<u>LDR</u>	<u>MDR</u>	<u>HDR</u>	<u>HDG</u>	<u>GGG</u>	<u>TSL</u>	<u>LCC</u>	<u>GPC</u>
Single-family dwellings	R	Y	Y	Y	R*	R*	Y*	R	N
Multi-family dwellings	N	N	R	Y	R	R	R	R	N
Bed and breakfast	R	R	R	R	R	R	R	R	R
Boarding and rooming house	N	N	R	R	R	R	R	R	R
Rest, nursing and retirement homes	R	R	R	R	N	N	R	R	N
Family care homes	R	R	R	R	N	N	R	R	N
Mobile home parks	N	N	N	R	N	N	N	N	N
COMMERCIAL USE GROUPS									
	<u>RCE</u>	<u>LDR</u>	<u>MDR</u>	<u>HDR</u>	<u>HDG</u>	<u>GGG</u>	<u>TSL</u>	<u>LCC</u>	<u>GPC</u>
Enclosed establishments for retail, eating and drinking, office, governmental administration, financial, medical, personal service and membership clubs	N	N	N	N	R*	R*	R	Y	Y
Bowling alleys, movie theaters, recreation centers and opera houses	N	N	N	N	R	R	N	R	Y
Pawnbrokering, as defined in Chapter 6, Article IX	N	N	N	N	Y	Y	N	N	N
Personal services, including but not limited to barbershops, beauty shops, dry-cleaning outlets, self-service laundries, shoe repair, etc.	N	N	N	N	R*	R*	R	Y	Y
Gaming and adult amusement	N	N	N	N	R	R	N	N	N
Hotels and motels; convention centers	N	N	N	N	R	R	R	R	Y
Resort mobile home and/or tent camping parks and resort cabins	R	N	N	N	N	N	N	R	N
Commercial uses, including but not limited to animal hospitals, enclosed kennels, car washes, cleaning and laundry plants, cold storage lockers, building material and equipment dealers, wholesaling services, construction trades	N	N	N	N	N	N	N	R	Y

and motor vehicle sales and/or repair									
Service stations	N	N	N	N	R	R	N	R	R
Commercial amusement	N	N	N	N	R	R	N	N	R
Gun clubs, shooting range	R	N	N	N	N	N	N	N	N
Automobile parking lot	N	N	N	N	R	R	N	R	R
Automobile parking structure	N	N	N	N	R	R	N	R	R
Medical marijuana center **	N	N	N	N	Y	Y	N	N	N
INDUSTRIAL USE GROUPS									
	<u>RCE</u>	<u>LDR</u>	<u>MDR</u>	<u>HDR</u>	<u>HDG</u>	<u>GGG</u>	<u>TSL</u>	<u>LCC</u>	<u>GPC</u>
Commercial/industrial uses, including but not limited to building contractor's yards, warehouse and storage facilities and research facilities	N	N	N	N	N	N	N	R	R
Warehousing and facilities for the manufacturing, fabrication or assembly of products; provided that they are completely enclosed	N	N	N	N	N	N	N	R	Y
Processing of minerals and ores and mineral extraction	R	N	N	N	N	N	N	R	R
All other facilities for the manufacturing, fabrication or assembly of products	N	N	N	N	N	N	N	R	R
Salvage yards, impound lots, maintenance	N	N	N	N	N	N	N	R	R
Oil and gas exploration and production and saw mills	R	N	N	N	N	N	N	N	N
PUBLIC, QUASI-PUBLIC USE GROUPS									
	<u>RCE</u>	<u>LDR</u>	<u>MDR</u>	<u>HDR</u>	<u>HDG</u>	<u>GGG</u>	<u>TSL</u>	<u>LCC</u>	<u>GPC</u>
Parks oriented toward passive recreation and unlighted play fields and facilities	Y	Y	Y	Y	R	R	Y	Y	Y
Parks and other recreational facilities oriented toward active recreation, including but not limited to lighted play fields and facilities	R	R	R	R	R	R	R	R	R
Elementary and secondary schools	N	R	R	R	N	N	R	N	N
Vocational/technical schools, museums	N	N	N	N	R	R	R	Y	Y
Churches, temples and synagogues	N	N	R	R	R	R	Y	Y	Y
Cemeteries	R	R	N	N	N	N	N	N	N
Halfway house community homes and state-licensed group homes for the developmentally disabled	N	N	R	R	R	R	R	R	N
Child care centers	R	R	R	R	R	R	R	R	R
Hospitals and mortuaries	N	N	N	N	N	N	N	R	Y
Helipads	R	N	N	N	N	N	N	R	R
Fire and rescue stations	R	R	R	R	R	R	R	R	R
Transit centers	N	N	N	R	R	R	R	R	R

GENERAL USE GROUPS									
	<u>RCE</u>	<u>LDR</u>	<u>MDR</u>	<u>HDR</u>	<u>HDG</u>	<u>GGG</u>	<u>TSL</u>	<u>LCC</u>	<u>GPC</u>
Utility facilities	R	R	R	R	R	R	R	R	R
Accessory uses	Y	Y	Y	Y	Y	Y	Y	Y	Y
City-owned facilities and structures used for public purposes ***	Y	Y	Y	Y	Y	Y	Y	Y	Y

KEY

Y: Use permitted by right

N: Use prohibited

R: Use permitted by special review

*: Eligible for accelerated review process

**: See Section 16-7-310 of this Chapter for supplemental restrictions

***: "City" shall include any City agency, department, authority or other entity formed or created by the City for public purpose.

RCE: Resource

LDR: Low-Density Residential

MDR: Medium-Density Residential

HDR: High-Density Residential

HDG: Historic Downtown Gaming

GGG: Gregory Gulch Gaming

TSL: Transitional

LCC: Limited Commercial

GPC: General Purpose Commercial

(Prior code 16-35; Ord. 12-03 §1, 2012; Ord. 12-16 §3, 2012)

Sec. 16-2-60. Yard and bulk requirements.

The following requirements for yard and bulk items shall apply to each district listed. All areas are in square feet and all distances are in feet, unless otherwise noted:

	<i>RCE</i>	<i>LDR</i>	<i>MDR</i>	<i>HDR</i>	<i>HDG^e</i>	<i>GGG^e</i>	<i>TSL</i>	<i>LCC</i>	<i>GPC</i>
Minimum lot area/DU	5 ^{a, c}	10,000	5,000	3,500	3,500	3,500	3,500	3,500	5,000
Minimum lot area	5 ^{a, c}	10,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000
Minimum lot width	80	80	50	50	50	50	50	50	50
Maximum lot coverage (%)	40	20	35	40	88	88	40	40	40
Minimum setback from a street for all uses	25	30	25	20	na	15	25	25	25
Minimum front yard setback for all uses	25	30	25	20	na	15	25	25	25
Minimum side yard setback from an interior lot line: ^{a, b}									
Principal uses	10	10	5	5	0, 5	5	5	10	10
Accessory uses	5	7	5	5	0, 5	5	5	5	5
Minimum rear yard setback:									
Principal uses	15	30	25	15	15	15	15	15	15
Accessory uses	5	10	5	5	5	5	5	5	5
Maximum parking setback from streets: ^{a, b}	10	10	10	10	0	0	10	10	10
Maximum building height: ^c									
Principal uses	35	35	35	35	53 ^f	53 ^f	35	35	35
Accessory uses	30	30	30	30	30 ^f	30 ^f	30	30	30

- a. Zero side yard setbacks may be approved in the following instances:
1. The property is approved as a planned unit development (PUD);
 2. If an existing building on the lot abutting the subject side maintains a zero setback; or
 3. If more than ½ of the existing buildings on the block in which the subject property is located, maintain zero setbacks.
- b. If a setback from an existing structure is established, said setback shall be at least 10 feet.
- c. See Section 16-1-130 of this Chapter for the definition of building height.
- d. Lot coverage for a project totaling 5,000 GSF or less, may cover up to 65%. Lot coverage of projects larger than 5,000 GSF may be increased up to 55% if approved as a PUD.
- e. See Paragraph 16-5-30(12) of this Chapter.
- f. Building heights for vacant properties, as defined herein, may exceed 53 feet in accordance with Article V of this Chapter.

Note: Fences are not subject to the setback requirements of this Section.

(Prior code 16-36)

Sec. 16-2-70. Growing marijuana in residential dwelling units.

The requirements in this Section shall apply to the growing of marijuana, including medical marijuana, in residential dwelling units by primary caregivers, patients and by any person who is twenty-one (21) years of age or older who is authorized under Article XVIII, Section 16(3)(a) of the Colorado Constitution to grow or cultivate marijuana plants:

(1) All cultivation, processing and production of marijuana plants shall be conducted entirely within a dwelling unit. For purposes of this provision, *dwelling unit* shall mean one (1) or more rooms and a single kitchen and at least one (1) bathroom, designed, occupied or intended for occupancy as separate quarters for the exclusive use of a single family for living, cooking and sanitary purposes, located in a single-family, two-family or multi-family dwelling or mixed use building.

(2) No cultivation, processing or production of marijuana may occur in an accessory structure; garage, whether attached or detached; shed; greenhouse; storage unit; or other structure other than a dwelling unit.

(3) Possession of marijuana by patients, caregivers and persons authorized to possess marijuana pursuant to Article XVIII of the Colorado Constitution shall comply with all applicable City and state regulations, ordinances and laws, including home occupation requirements set forth in this Chapter.

(4) No cultivation, possession or dispensing of marijuana shall occur in the common areas of a multi-family or attached residential building.

(5) No more than twelve (12) marijuana plants, regardless of size or stage of growth, may be cultivated or kept within any single dwelling unit.

(6) In no event shall a patient or primary caregiver keep, cultivate, grow or process more medical marijuana than such person is entitled to possess under Article XVIII, Section 14 of the Colorado Constitution.

(7) In no event shall a person twenty-one (21) years of age or older that is cultivating marijuana plants for his or her own use possess, grow, process or transport more than six (6) marijuana plants, with three (3) or fewer being mature. Possession of marijuana shall be in full compliance with all applicable provisions of Article XVIII, Section 16 of the Colorado Constitution and all state laws and regulations promulgated pursuant thereto.

(8) Possession, growing and processing of marijuana shall meet the requirements of all adopted City building and life/safety codes. (Prior code 16-37; Ord. 12-16 §4, 2012; Ord. 13-03 §1, 2013)

ARTICLE III

Nonconforming Uses and Buildings

Sec. 16-3-10. Nonconformance.

Certain uses of land and buildings may be found to be in existence at the time of the passage of the ordinance codified herein which do not meet the requirements of this Chapter. It is the intent of this Chapter to allow the continuance of such nonconforming use upon the terms and conditions set forth hereafter. (Prior code 16-51)

Sec. 16-3-20. Expansion or enlargement.

(a) A nonconforming building or use shall not be extended or enlarged unless it conforms with the provisions of this Chapter.

(b) A nonconforming use may be extended throughout any part of a building which was arranged or designed for such use prior to the enactment of the ordinance codified herein.

(c) The hours of operation, lighting and similar characteristics of a nonconforming use shall not be altered to adversely impact adjacent properties. (Prior code 16-52)

Sec. 16-3-30. Repairs and maintenance.

The following changes or alterations may be made to a nonconforming building or to a conforming building housing a nonconforming use:

(1) Maintenance and repairs that are needed to maintain the good condition shall be permitted; however, if officially condemned, a building may not be restored under this provision.

(2) Any structural alteration that would reduce the degree of nonconformance or change the use to a conforming use shall be permitted. (Prior code 16-53)

Sec. 16-3-40. Restoration or replacement.

(a) If a nonconforming building is destroyed or damaged in any manner to the extent that the cost of restoration to its condition before the occurrence shall exceed seventy-five percent (75%) of the cost of reconstructing the entire structure, it shall be restored only in compliance with the requirements of this Chapter.

(b) Where a nonconforming building is damaged less than seventy-five percent (75%) of the cost of reconstructing the entire structure, it may be repaired or restored, provided that any such repair or restoration is started within twelve (12) months and is completed within eighteen (18) months from the date of partial destruction.

(c) The cost of land or any factors other than the cost of the structure are excluded in the determination of cost of restoration for any building or activity devoted to a nonconforming use. (Prior code 16-54)

Sec. 16-3-50. Discontinuance.

Whenever a nonconforming use has been discontinued for a period of twelve (12) months, it shall not thereafter be reestablished, and any future use shall be in conformance with the provisions of this Chapter. (Prior code 16-55)

Sec. 16-3-60. Nonconforming lots on record.

Nonconforming lots on record at the time of passage of the ordinance codified herein may be built upon, provided that all other relevant district requirements are met. (Prior code 16-56)

Sec. 16-3-70. Change in nonconforming use.

No nonconforming use of a building or lot may be changed to another nonconforming use. A nonconforming use of a building or lot may be changed to a conforming use. (Prior code 16-57)

Sec. 16-3-80. Construction prior to ordinance passage.

Nothing herein shall require any change in plans, construction or designated use of a building or structure for which approval of the City Council has been obtained prior to the effective date of the ordinance codified herein and construction of which shall have been diligently prosecuted within three (3) months following the date of such approval, and completed within twelve (12) months of the date of such approval. (Prior code 16-58)

Sec. 16-3-90. Special exceptions to provisions on expansion of nonconforming uses.

The Board of Adjustment may authorize, upon appeal in specific cases, an exception to the provisions of this Article, subject to terms and conditions fixed by the Board of Adjustment. No exception shall be authorized hereunder unless the Board of Adjustment shall find that the following conditions exist, insofar as applicable in the specific case:

- (1) That the use is a nonconforming use as defined by this Chapter and is in full compliance with all requirements of this Chapter applicable to nonconforming uses;
- (2) That, owing to exceptional circumstances, including conflicts with historic preservation, literal enforcement of the provisions of this Article will result in unnecessary hardship;
- (3) That the exception will not substantially or permanently injure the appropriate use of adjacent conforming property in the same district;
- (4) That the exception will not alter the essential character of the district in which the property for which the exception is sought is located;
- (5) That the exception will not weaken the general purposes of this Chapter or the regulations established herein for the specific district;
- (6) That the exception will be in harmony with the spirit and purposes of this Chapter; and
- (7) That the exception will not adversely affect the public health, safety or welfare. (Prior code 16-59)

ARTICLE IV

Special Review Uses

Sec. 16-4-10. Purpose.

Although each zoning district is primarily intended for a predominant type of use (such as dwellings in residential districts), there are a number of uses which may or may not be appropriate in

a particular district depending upon, for example, the location, nature of the proposed use, character of surrounding development, traffic capacities of adjacent streets and potential environmental effects. These factors may dictate that the circumstances of development should be individually reviewed. It is the purpose of this Chapter to provide review of such uses so that the community is assured that such uses are compatible with their locations and surrounding land uses and will further the purposes of this Chapter. (Prior code 16-71)

Sec. 16-4-20. Application.

An application for approval of a special review use may be filed by a person having an interest in the property for which the special review use is requested, with the written consent of the owner, and shall be made on a form provided by the City. The application must include:

- (1) A complete site plan showing the major details of the proposed development, consisting of the location of buildings and structures, off-street parking and loading areas, service and refuse areas, means of ingress and egress, major landscaping or screening proposals, signs and pedestrian areas;
- (2) A time schedule for development;
- (3) Such other information as the Planning Commission requires by written rule;
- (4) Any other information the applicant believes will support his or her request; and
- (5) Accompanying the application shall be a filing fee which shall be one-half (1/2) of the zoning amendment fee. The applicant shall be billed by the City for unique costs incurred relative to the application. Said charges will be paid in full prior to special review use public hearing. (Prior code 16-72)

Sec. 16-4-30. Coordination with planned unit development plan approval.

If the proposed special review use is submitted as part of a planned unit development plan, the provisions of this Chapter shall be met through approval of the planned unit development plan. (Prior code 16-73)

Sec. 16-4-40. Application review.

(a) Within sixty (60) days of receipt of a complete application and other required material, the Planning Commission shall hold a public hearing to consider said application. The Planning Commission, within thirty (30) days of the conclusion of the public hearing, shall either recommend approval of said application in whole or in part, with or without modifications and/or conditions, or recommend denial of the application. Any such recommendation shall be referred to the City Council for final action.

(b) The application will then be submitted to the City Council for its action. The City Council may choose to hold a public hearing concerning said application or, at its option, without a hearing, City Council may approve, disapprove, approve the application with modifications and/or conditions, or request that the application be further reviewed by the Planning Commission. (Prior code 16-74)

Sec. 16-4-50. Issuance of a special review use permit.

An approved special review use shall not be conducted until a special review use permit has been issued by the City. The use shall not be conducted until the applicant has entered into an agreement with the City specifying that all conditions imposed by the City Council will be completed, and that the use and improvements will be in accordance with the approved application site plan and development schedule and other conditions as required. (Prior code 16-75)

Sec. 16-4-60. Criteria and conditions for approval.

(a) The following criteria, as applicable, shall be considered by the Planning Commission and the City Council in reviewing applications for special review use under this Chapter:

(1) That the use/development being proposed is consistent in all respects with the spirit and intent of the comprehensive development plan and of this Chapter, and that it would not be contrary to the general welfare and economic prosperity of the City or the immediate neighborhood;

(2) That such use/development will lend economic stability, compatible with the character of any surrounding established areas;

(3) That the use/development is adequate for internal efficiency of the proposal, considering the functions of residents, recreation, public access, safety and such factors including storm drainage facilities, sewage and water facilities, grades, dust control and such other factors directly related to public health and convenience;

(4) That external effects of the proposal are controlled, considering compatibility of land use; movement or congestion of traffic; services, including arrangement of signs and lighting devices as to prevent the occurrence of nuisances; and landscaping and other similar features to prevent the littering or accumulation of trash; together with other factors deemed to effect public health, welfare, safety and convenience; and

(5) That an adequate amount and proper location of pedestrian walks, malls and landscaped spaces to prevent pedestrian use of vehicular ways and parking spaces and to separate pedestrian walks, malls and public transportation loading places from general vehicular circulation facilities.

(b) In considering an application for a special review use, the approving agency shall consider and may impose modifications or conditions concerning, by way of illustration and not limitation, the following development features:

(1) Size and location of the site;

(2) Internal traffic circulation and access to adjoining public streets;

(3) Location and amount of off-street parking;

(4) Fencing, screening and landscaped separations, including open space;

(5) Building bulk and location;

(6) Sign lighting; and

(7) Noise, vibration, air pollution and other environmental influences. (Prior code 16-76)

Sec. 16-4-70. Alterations of approved uses.

No approved special review use may be modified, physically expanded, hours of operation extended or otherwise altered unless amended in accordance with the procedures applicable to initial approval of a special review use as set out in this Chapter, except that the Zoning Administrator may authorize changes in use, physical layout, hours of operation or other limited changes if the Zoning Administrator finds such changes to be compatible with the intent of this Article and that such changes would not increase or aggravate the use's impact on adjacent uses, properties or public infrastructure. Administrative approvals granted under this Article shall become effective only upon ratification by the City Council. (Prior code 16-77)

Sec. 16-4-80. Approved uses existing prior to effective date of provisions.

Any approved special review use which existed prior to the effective date of the ordinance codified herein shall continue to be an approved special review use unless modified or noted herein. (Prior code 16-78)

Sec. 16-4-90. Control of special review use after approval.

(a) In the event of noncompliance by the applicant with the approved special review use plan, the written agreement or the conditions imposed by the Planning Commission or the City Council may call the special review use up for further review. Upon such review and after notice given to the applicant, the City Council, upon recommendation by the Planning Commission, may revoke the previously approved special review use or amend the previous approval.

(b) If the special review use is not in substantial operation within the period of established vested property rights, the Planning Commission, the City Council or the City staff may initiate proceedings to review the special review use. Said review shall occur in the same manner as review for the initial approval of the special review use, and upon such review, the special review use may be revoked or the limits of the development schedule set forth therein may be extended. (Prior code 16-79)

ARTICLE V

Planned Unit Development

Sec. 16-5-10. Purpose.

The intent of the planned unit development (PUD) regulations is to permit greater flexibility of uses and, consequently, more creative and imaginative design for development than generally is possible under conventional zoning regulation. It is further intended:

(1) To promote more economical and efficient use of land while providing a harmonious grouping of a variety of land uses.

(2) To provide to the developer reasonable assurance of ultimate approval before expending the time and energy toward completing final designs and, at the same time, provide City officials with the assurance that that project will be an asset to the community's growth, both aesthetically and economically.

(3) To ensure that the project's architecture is in keeping with the City Architectural Design Guidelines and National Historic Landmark designation.

(4) To create physical connections between existing and proposed developments in order to achieve an integrated community with common open space, transportation, transit and public services networks.

(5) To ensure that development does not adversely impact the City's public infrastructure or the City's ability to maintain adequate levels of service to existing development.

(6) To ensure that new development pays its own way and that all costs associated with mitigating the development's impacts are borne by the developer.

(7) To allow for innovative development projects that assist in the implementation of the comprehensive plan and not as a device to circumvent development regulations, standards and good planning advice.

(8) To provide development incentives to vacant properties, as defined in this Chapter, to remediate blighted conditions caused by underutilization and deterioration of properties and structures located thereon; to encourage underperforming properties to redevelop and contribute to the economic health of the City and its residents; to encourage reinvestment; and to enhance the historic character of the City through redevelopment of vacant properties. (Prior code 16-101)

Sec. 16-5-20. Scope and applicability.

(a) Application for a planned unit development may be made for land located in any zoning district. The process for designation as a planned unit development is a rezoning that is subject to approval by City Council through adoption of an ordinance that establishes the PUD zone district.

(b) Except as otherwise amended through and provided for in the preliminary or final development plan, all requirements applicable to the underlying zoning district or districts in which the property is located as outlined in Section 16-2-60 of this Chapter shall apply to planned unit developments.

(c) Uses permitted in the planned unit development shall be limited to those uses permitted outright or by special review in the underlying zoning district or districts unless other uses are specifically identified on the approved planned unit development plan.

(d) An applicant for a planned unit development that will require subdivision shall be required to submit a preliminary plat application for simultaneous processing with the review of a planned unit development under this Chapter.

(e) Any proposed nonresidential development in excess of forty thousand (40,000) gross square feet shall be processed as a PUD and required to submit an application for preliminary and final development plan approval.

(f) If a proposed development falls within an area designated under the Ridgeline Development Overlay District, the application must also comply with the Ridgeline Development provisions of this Code. The PUD process shall not be used to relive an applicant from compliance with the regulations of the Ridgeline Development Overlay District; such regulations shall be considered an additional requirement of the preliminary development plan and the final development plan submittal requirements.

(g) Building height bonuses. A PUD application for one (1) or more vacant properties, as defined in Section 16-1-130 of this Chapter, located within the HDG or GGG zoning districts may request building heights for principal structures in excess of the maximum building heights permitted in the HDG or GGG zoning districts. (Prior code 16-102)

Sec. 16-5-30. Submittal requirements.

(a) An application for a planned unit development may be filed by a person having an interest in the property for which the planned unit development plan is requested, with the written consent of the owner, and shall be made on a form provided by the City. The applicant shall accompany his or her application with a preliminary development plan as specified in this Article.

(b) No application for a preliminary or final development plan will be accepted until all fees and charges have been paid including all outside costs incurred by the City and made necessary as a result of the application, and a consultant reimbursement agreement has been executed. The City requires every applicant to execute a Consultant reimbursement agreement to cover the costs of processing and reviewing the application by the City's consultant including planning, engineering, traffic and legal review. A form of consultant reimbursement agreement is available from the Community Development Department upon request.

(c) An applicant may request a waiver of any of the requirements of this Section in writing to the Zoning Administrator. A request for waiver of requirements must demonstrate that the project will have no negative qualitative or quantitative impact as intended by a specific requirement.

(d) Preliminary development plans and final development plans shall contain the following information:

Table of PUD Requirements

<i>Requirement</i>	<i>PDP</i>	<i>FDP</i>
Letter of intent describing proposal, development schedule, phasing	X	X
Title commitment issued within 6 months of application showing ownership, liens, encumbrances	X	X
Adjacent property owners within 300 feet – names and mailing addresses	X	X
ALTA/ASCM survey prepared within 6 months of application		X
Existing topographic conditions – 2-foot contours for slopes less than 10%; 5-foot contours for slopes 10% or greater	X	
Grading plan	X	X
Drainage report showing 100-year floodplain limits, design for 10/100-year events, identification of federal or state permitting requirements; calculations of projected quantity of stormwater entering subdivision naturally from area outside of subdivision; location, size and grades of required culverts, inlets or storm drainage sewers, details of on-site retention of stormwater	X	X
Soils, geotechnical report identifying hazardous waste or contaminated areas, existing soils and geotechnical conditions		X
Traffic impact report	X	X
Utility plan showing proposed utility improvements and relocations and documentary evidence of provision for utilities	X	X
Plan exhibit – sheet size 24" x 36"	X	X
Proposed name of plan	X	X
North point and date of preparation	X	X
Legal description	X	X
Scale, written and graphic, 1" = 50'	X	X
Vicinity map (scale 1:2,000)	X	X
Requirement	PDP	FDP
Total acreage	X	X
Zoning of property and adjacent properties; proposed zoning and uses	X	
Boundary lines of PUD in heavy solid line	X	X
Civil construction drawings	X, no less than 20%	X, no less than 60% complete
Boundary of existing 100-year floodplain; drainage channels and significant natural features	X	X
Preliminary site plan showing existing and proposed uses and densities (residential = units/acre; nonresidential = FAR), lots and property boundaries, streets and existing and proposed access points, existing easements and proposed dedications,	X	

maximum building height, lot square footage		
Specific site plan, fully surveyed, reflecting permitted land uses and respective acreage, setbacks and building envelopes fully dimensioned, location of existing/proposed streets, easements, utilities, public dedications		X
Architectural renderings showing schematic design, elevations of all sides of a proposed building, structural dimensions including height from lowest to highest point, color renderings depicting anticipated color scheme of all building facades	X	X
Proposed landscaping		X
Shadow study		X
Proposed signage, if different from sign code provisions		X
Proposed lighting		X
Owner's certificate	X	X
Certificate of Planning Commission approval	X	X
Certificate of City Council approval	X	X
County Clerk and Recorder certificate		X
Treasurer's certificate of paid taxes, showing that taxes are not delinquent		X
Mineral estate notification statement	X	X
Standard plan notes		X
Subdivision improvement agreement		X
Copy of existing or proposed covenants, conditions and restrictions (CCRs)		X
For building height bonus PUDs, a statement of the maximum building height requested, along with written justification based on public benefits of the development, including but not limited to: estimated minimum number of gaming devices proposed; accommodation of parking within structured parking facility; estimated square footage devoted to gaming, retail sales, hotel and lodging; estimated revenues generated by development from sales and use tax, gaming devices and other anticipated revenues; description of on- and off-site public improvements constructed as part of the development (e.g., drainage enhancements); grant of public easements for uses such as sidewalks, public parking; and other amenities provided by the development.	X	
Written statement of conformance with Comprehensive Plan, as may be amended.	X	X
Other information deemed necessary by the City to evaluate the request.	X	X

(Prior code 16-103)

Sec. 16-5-40. Review process.

(a) PUD – Multiple lots. Applicants proposing development that will result in a multiple lot subdivision/development are required to submit a preliminary development plan and a final development plan along with any required subdivision application.

(b) PUD – Single lot. Applicants proposing development that will result in the creation of a single lot development may elect to combine the preliminary plan and final development plan submittal requirements into one (1) application resulting in one (1) public hearing before the Planning Commission and one (1) public hearing before the City Council. The combined development plan shall be referred to as a final development plan and shall comply with the requirements and approval criteria applicable to final development plans.

(c) Preapplication conference. An applicant shall be responsible for scheduling a preapplication conference with the City in order for the applicant to be informed about the planned unit development procedures and related City requirements, to obtain a written list of what the application shall include and to obtain copies of any guidelines or ordinance interpretations. If a PUD application is not submitted within one hundred eighty (180) days of the preapplication conference, the applicant may be required to schedule and attend another preapplication conference before submitting a PUD application.

(d) Determination of submittal completeness. An application for preliminary development plan or final development plan shall be considered complete if it is submitted in the required form, includes all submittal information and supplemental reports and is accompanied by the applicable fees and City consultant agreement.

(1) The Zoning Administrator shall have thirty (30) days upon submission of the PUD application to determine whether the application is deemed complete.

(2) Within the initial thirty-day period the Zoning Administrator shall, as part of the review process, send the submittal to applicable City departments and referral agencies. In the event any referral agency fails to respond within the thirty-day period, the City may interpret such nonresponsiveness to indicate that there are no objections to said application.¹

(3) The Zoning Administrator shall hold a Development Review Committee (DRC) meeting during the thirty-day review period, where the applicable City departments and referral agencies will review and provide comments.

(4) If the Zoning Administrator determines that the application is incomplete, the applicant shall be provided written comments outlining the deficiencies that must be addressed in order for the application to be considered complete. The applicant shall then resubmit his or her application, wherein the Zoning Administrator shall have thirty (30) days to review the resubmittal, redistribute to the applicable City departments and referral agencies and hold a DRC meeting for review of the resubmittal.

¹ Exception: If a project is subject to submitting a FEMA Conditional Letter of Map Revision (CLOMR), the City's review and approval of said application shall be sufficient for entitlement purposes. Notwithstanding, the applicant shall be responsible for any additional requirements imposed by FEMA, and shall be responsible for ensuring updating said application with the City.

(5) If the application is not complete but, in the opinion of the Zoning Administrator, the errors or omissions are minor in nature and easily corrected, the application can be accepted for processing subject to a waiver by the applicant of the time limitations.

(e) Planning Commission public hearing. Within sixty (60) days of receipt of a completed application, as determined by the Zoning Administrator, and other required materials, the Planning Commission shall hold a public hearing to consider the application and, within thirty (30) days of the conclusion of the public hearing, shall either recommend approval of said application in whole or in part, with or without modifications and/or conditions, or recommend denial of the application. Any such recommendation shall be referred to the City Council for final action.

(f) City Council public hearing. Upon the Planning Commission's recommendation, the application shall be submitted to the City Council for its action. The City Council shall hold a public hearing concerning said application and may approve, disapprove, approve with modifications and/or conditions or request that the application plan be further reviewed by the Planning Commission. (Prior code 16-104)

Sec. 16-5-50. Criteria of approval.

The Planning Commission and City Council must be satisfied that the proposed PUD application has met each of the following criteria or can demonstrate that one (1) or more of them is not applicable and that a practicable solution consistent with public interest has been achieved for each of these elements:

(1) PUD/rezoning approval:

a. The PUD is consistent with the City's comprehensive plan, or reflects conditions that have changed since the adoption of the comprehensive plan.

b. Facilities and services (including sewage, drainage, water, electric, gas, police, fire protection, road and transportation) will be available to serve the subject property while maintaining adequate levels of service to the existing development.

c. The proposal will not result in significant adverse impacts upon the natural environment, including air, water, noise, stormwater management, wildlife, vegetation, ridgelines or such impacts will be substantially mitigated.

(2) Preliminary development plan:

a. The preliminary development plan establishes an appropriate relationship to the surrounding area, including the following as applicable:

1. Building types in terms of appropriateness to density, site relationship and bulk;
2. Building design in terms of orientation, spacing, materials, signs and lighting;
3. Variety in terms of housing types, densities, facilities and open space;

4. Sufficiency of proposed landscaped areas to promote compatibility of on-site uses; minimize heat, glare and noise; aid in the control of vehicular and pedestrian circulation; and protect nearby properties; and

5. Proposed uses other than those permitted outright or by special review in the underlying districts are appropriately located within the PUD and screened as necessary from abutting properties to ensure that such uses do not adversely affect abutting properties.

b. The proposed PDP complies with all applicable use and development standards set forth in this Chapter that are not otherwise modified or waived according to the approved terms of the preliminary development plan.

c. To the maximum extent feasible, the plan mitigates any potential significant adverse impacts on adjacent properties or general community, including traffic, public safety or density impacts.

d. The preliminary development plan adequately demonstrates sufficient capacity of public utilities to serve the development and/or identifies additional infrastructure that is necessary to mitigate the proposed development's impact to public utilities.

e. The preliminary development plan adequately demonstrates that the development shall be able to mitigate the impact on the 10/50/100-year historic drainage flows that traverse through the property and provides for on-site detention to contain all stormwater generated by the development which is in excess of historic flows.

f. The preliminary development plan provides, where appropriate, for preservation of natural features, including trees and drainage areas, recreation, views, density relief and appropriateness for intended use consistent with the goals and objectives of the Comprehensive Plan.

g. The proposal demonstrates that mechanisms have been established or will be established for permanent maintenance of common open areas and public facilities to ensure that such maintenance does not become an obligation or liability of the City.

h. For building height bonus PUDs only, the development will provide substantial public benefits in terms of numbers of gaming devices; provision of hotel and lodging services; generation of sales and use taxes; on- and off-site public improvements such as road widening; drainage improvements; public amenities; provision for public parking; and other amenities provided by the development.

i. The project's overall conformity with the historic appearance of the City.

(3) Final development plan. The final development plan shall meet the preliminary development plan approval criteria, as well as the following criteria:

a. The final development plan conforms with the approved preliminary development plan.

b. All applicable state and federal permitting has been secured or will be secured prior to commencement of development.

c. The final development plan provides building elevations and plans that are sufficient to show building style, colors and materials. Building elevations shall also illustrate the buildings from perspective within and adjacent to the site.

d. The final development plan provides sufficient landscaping detail to illustrate plant materials and size when planted; suitability of selected plant materials for local climate and plant habitat; and manner in which new landscaping is integrated with natural vegetation to be preserved.

e. The project's overall conformity with the historic appearance of the City. (Prior code 16-105)

Sec. 16-5-60. Lapse of approval.

(a) The preliminary development plan approval shall be valid for one (1) year from the date of approval by the City Council. An extension of up to one (1) additional year may be granted by the City Council at its sole discretion, based on a written request from the applicant. Failure to submit a final development plan within the prescribed time will result in a forfeiture of the preliminary development plan approval, and the project shall be null and void.

(b) The final development plan shall be valid for three (3) years, or unless as otherwise established under separate process of vesting of property rights. If the development fails to post the required financial security or fails to secure the issuance of a building permit within the specified time, the final development plan shall become null and void. (Prior code 16-106)

Sec. 16-5-70. Recordation of plan.

(a) Upon the City's approval of a preliminary or final development plan, the applicant shall immediately deliver the original Mylar of the plan, containing all revisions and amendments required by the City Council or as directed by City staff prior to approval, to the City Clerk.

(b) The applicant shall pay for the costs of recordation of the preliminary or final development plan. In addition, the owner/developer shall deliver to the City Clerk, along with the plan, two (2) sets of complete and final construction plans.

(c) The applicant shall prepare and submit to the City Clerk the preliminary or final development plan in a form and upon material acceptable for recordation by the County Clerk and Recorder.

(d) Failure of an applicant to submit an acceptable plan to the City Clerk within ninety (90) days of the date of approval of the plan shall, upon the enactment of a resolution by the City Council finding that the submittal was untimely, void preliminary or final development plan approval for the project. (Prior code 16-107)

Sec. 16-5-80. Construction procedures and building permits.

(a) Provided that no lapse in approval has occurred to void the final development plan approval, the appropriate officials shall issue building permits for buildings and structures in the area covered by an approved final development plan where said buildings and structures are in conformity with the approved final development plan and with all other applicable ordinances and regulations.

(b) Such official shall issue a certificate of occupancy for any completed building or structure located in an area covered by the approved final development plan if the completed building or structure conforms to the requirements of the approved final development plan and all other applicable ordinances and regulations. (Prior code 16-108)

Sec. 16-5-90. Amendments to approved PUD plans.

(a) Changes or alterations to an approved preliminary development plan must be approved under the procedures authorized for preliminary development plans.

(b) No changes may be made in an approved final development plan during the construction of the planned unit development except upon application to the City under the procedures provided below:

(1) Minor changes in the location, siting and height of buildings and structures and other minor changes may be authorized by the Zoning Administrator if said changes are required by engineering or other circumstances not foreseen at the time the final development plan was approved. Any administrative approvals granted under this Paragraph shall be transmitted to the Planning Commission and the City Council for their information by written memorandum from the Zoning Administrator.

(2) All changes in the approved final development plan, except those which are minor changes under Paragraph (1) above, must be approved by the Planning Commission and City Council under the procedures authorized for final development plan approval.

(3) Any changes which are approved for the final development plan must be recorded as an amendment to the recorded copy of the final development plan at the expense of applicant. (Prior code 16-109)

Sec. 16-5-100. Enforcement of plan.

The City shall be authorized to enforce at law or in equity any provision of the final development plan or associated development agreements. (Prior code 16-110)

Sec. 16-5-110. Control of development after completion.

After the planned unit development has been substantially completed, the use of the land and the construction, modification or alteration of any buildings or structures within the planned development will be governed by the approved final development plan rather than by any other provisions of this Chapter. (Prior code 16-111)

ARTICLE VI

Off-Street Parking and Loading

Sec. 16-6-10. Parking; general requirements.

(a) At the time of the erection of a new structure or at the time of enlargement or change in use of an existing structure within any district in the City, off-street parking spaces shall be provided as stated herein.

(b) Where square feet are specified, the area measured shall be the floor area primary to the functioning of the particular use of property and shall exclude stairwells; elevator shafts; hallways; ornamental balconies; space occupied by heating, air conditioning or other utility equipment; space devoted exclusively to storage; and space devoted to off-street parking or loading.

(c) The number of employees of a new or expanding business shall be estimated in a manner approved by the Planning Commission, and the number of employees of an established business shall be determined from an examination of employment information presented by the applicant. Employees shall include all persons, including proprietors working on the premises during the longest shift at peak season.

(d) Off-street parking spaces as provided herein shall be provided only for the approved principal and accessory uses on the particular property, unless otherwise approved by the City Council, pursuant to Section 16-6-80 of this Article. (Prior code 16-131)

Sec. 16-6-20. Parking standards designated for each use.

The parking space requirements for each use shall be as follows:

(1) Residential uses.

a. For single-family dwellings and two-family dwellings, two (2) spaces per dwelling. In the event topography or other physical conditions do not permit these spaces to be provided on the lot containing the dwelling unit, alternative parking proposals may be approved by the Zoning Administrator;

b. For multi-family dwellings containing three (3) or more dwelling units, two (2) spaces per dwelling unit;

c. For a rooming house or boarding house, one (1) space per guest accommodation;

d. For a bed and breakfast, one (1) space per guest room;

e. For housing restricted to the aged, disabled, etc., one-half (½) space per unit; and

f. For dormitories and other lodging facilities and rooms for unmarried students, three (3) spaces per four (4) occupants.

(2) Commercial residential uses.

a. For hotels and motels, one (1) space per guest room plus one (1) space per two (2) employees; and

b. For a club or lodge, spaces to meet the combined requirements of the uses being conducted, such as hotel, restaurant, auditorium, etc.

(3) Institutions.

a. For a nursing home, rest home or home for the aged, one (1) space per three (3) beds; and

b. For a hospital, three (3) spaces per two (2) beds.

(4) Places of public assembly.

a. For a church, one (1) space per three (3) seats;

b. For a library or reading room, one (1) space per four hundred (400) feet of floor area plus one (1) space per two (2) employees;

c. For a preschool nursery, day care school, kindergarten, elementary school or intermediate school, one and one-half (1½) spaces per teacher plus one (1) space per administrative employee, in addition to any areas for loading and unloading of pupils;

d. For a high school, one (1) space per teacher, plus one (1) space per administrative employee, plus one (1) space for each three (3) students or one (1) space per three (3) seats in the main auditorium;

e. For a vocational or commercial school, one (1) space per teacher, plus one (1) space per administrative employee, plus one (1) space per two (2) students;

f. For auditoriums and meeting rooms, one (1) space per three (3) seats; and

g. Where there is no fixed seating, the standard shall be one (1) space per twenty-one (21) square feet of seating area.

(5) Commercial amusements.

a. For a stadium, arena or theater, one (1) space per two (2) seats;

b. For a bowling alley, five (5) spaces per alley plus one (1) space per two (2) employees;

c. For dance halls and skating rinks, one (1) space per fifty (50) feet of floor area plus one (1) space per two (2) employees; and

d. For other commercial amusements where there is no fixed seating, the standard shall be one (1) space per twenty-one (21) square feet of seating area.

(6) Commercial.

- a. For a retail store, except as provided in Subparagraph b. below, two (2) spaces per two hundred fifty (250) square feet of floor area;
- b. For a service or repair shop, or a retail store handling exclusively bulky merchandise such as automobiles and furniture, one and one-half (1½) spaces per three hundred (300) square feet of floor area;
- c. For offices other than medical and dental, one (1) space per three hundred (300) square feet of floor area;
- d. For medical and dental clinics, two (2) spaces per three hundred (300) square feet of floor area plus one (1) space per two (2) employees;
- e. For an eating or drinking establishment, one (1) space per three (3) seats;
- f. For mortuaries, one (1) space per three (3) seats; and
- g. For gaming uses, one (1) space per sixty-five (65) square feet of gaming area. Where gaming is the principal use of the structure and uses such as restaurants, hotels and retail stores within the same structure are ancillary, the requirements of Section 16-6-60 of this Article shall not apply and the calculation for parking requirements shall be determined by the City Council based on a parking study prepared by the applicant as approved by the City, using similar casino multi-use projects.

(7) Industrial.

- a. For a storage warehouse, manufacturing establishment or an air, rail or trucking freight terminal, two (2) spaces per three (3) employees; and
- b. For wholesale establishments, one (1) space per employee plus one (1) space per five hundred (500) square feet of patron serving area.

(8) For uses not specified, the number of required parking spaces shall be specified by the Zoning Administrator with the consent of the Planning Commission, based upon usage, square footage and other criteria as set forth in this Chapter. (Prior code 16-132)

Sec. 16-6-30. Loading; school sites.

A driveway designed for continuous forward flow of passenger vehicles for the purpose of loading and unloading children shall be located on the site of any school having a capacity greater than twenty-five (25) students. (Prior code 16-133)

Sec. 16-6-40. Loading; merchandise, materials or supplies.

(a) Buildings or structures to be built or substantially altered which receive and distribute material or merchandise by truck shall provide and maintain off-street loading berths in sufficient numbers and size to adequately handle the needs of the particular use.

(b) If loading space has been provided in connection with an existing use or is added to an existing use, the loading space shall not be eliminated if elimination would result in less space than is required to adequately handle the needs of the particular use.

(c) Off-street parking areas used to fulfill the requirements of this Chapter shall not be used for loading and unloading operations except during periods of the day when not required to take care of parking needs. (Prior code 16-134)

Sec. 16-6-50. Maintenance restrictions.

(a) Where required, the provision and maintenance of off-street parking and loading spaces is the continuing obligation of the property owner.

(b) No building permit or other permit shall be issued until plans are presented that show property that is and will remain available for exclusive use as off-street parking and loading space.

(c) The subsequent use of property for which the building permit is issued shall be conditional upon the unqualified continuance and availability of the amount of parking and loading space required by this Article.

(d) Should the owner or occupant of any lot or building change the use to which the lot or building is put, thereby increasing off-street parking or loading requirements, it shall be unlawful and a violation of this Chapter to begin or maintain such altered use until such time as the increased off-street parking or loading requirements are met. (Prior code 16-135)

Sec. 16-6-60. Multiple-use requirements.

In the event several uses occupy a single structure or parcel of land, the total requirements for off-street parking shall be the sum of the requirements of the several uses computed separately. (Prior code 16-136)

Sec. 16-6-70. City Council may increase or reduce number of required parking spaces.

(a) The City Council may increase or decrease the required number of off-street parking spaces in consideration of the following factors:

- (1) Probable number of cars owned by occupants of dwellings in the planned unit development;
- (2) Parking needs of any nondwelling uses;
- (3) Varying time periods of use;
- (4) Whatever joint use of common parking areas is proposed; and
- (5) In recognition of impact on historic structures, features and/or significant landforms.

(b) Regardless of a reduction in off-street parking spaces by the City Council, adequate space and site design shall be provided to accommodate the standard number of spaces for the proposed use. (Prior code 16-137)

Sec. 16-6-80. Location of spaces.

(a) Unless otherwise approved by the City Council, required off-street parking spaces shall be located on the same lot with the use they are serving.

(b) Off-street parking spaces serving uses in the historic downtown and Gregory Gulch gaming districts shall not be subject to Subsection (a) above; however, they shall be subject to the City Gaming Parking Program. (Prior code 16-138)

Sec. 16-6-90. Use of parking spaces.

(a) Required parking spaces shall be available for the parking of operable passenger vehicles of residents, customers, patrons and employees only, and shall not be used for the storage of vehicles or materials or for the parking of trucks used in conducting the business or use, or for the purpose of advertising.

(b) Parking provided in excess of the spaces required in this Chapter or for the storage of vehicles or the parking of trucks used in conducting the business or use served by such parking shall not be considered as an accessory use, but shall be a principal parking use, subject to the provisions of this Chapter applicable to parking lots or structures unless approved as part of a special review use or planned unit development application or otherwise approved by the City Council.

(c) Parking for which a fee or other payment is paid or received shall not be considered an accessory use, but shall be a principal parking use, subject to the provisions of this Chapter applicable to parking lots or structures unless approved as part of a special review use or planned unit development application or otherwise approved by the City Council. (Prior code 16-139)

Sec. 16-6-100. Setbacks.

Setbacks for required parking and loading spaces shall be as provided for in Section 16-2-60 of this Chapter. (Prior code 16-140)

Sec. 16-6-110. Plans required for building permit.

A plan drawn to scale, indicating how the off-street parking and loading requirements, excluding single dwelling unit areas, are to be fulfilled, shall accompany an application for a building permit. The plan shall show all elements necessary to indicate that the requirement is being fulfilled, including the following:

- (1) Delineation of individual parking and loading spaces;
- (2) Circulation area necessary to serve spaces;
- (3) Access to streets and property to be served;

- (4) Curb cuts;
- (5) Dimensions, continuity and substance of screening;
- (6) Grading, drainage, surfacing and subgrading details;
- (7) Delineation of obstacles to parking and circulation in finished parking area;
- (8) Specifications as to signs and bumper guards; and
- (9) Other pertinent details. (Prior code 16-141)

Sec. 16-6-120. Design requirements.

Parking and loading areas shall be designed in accordance with the following requirements:

(1) Surfaces. Areas used for standing and maneuvering of vehicles shall have durable and dustless surfaces maintained adequately for all-weather use.

(2) Sight-obscuring fence. Except for parking to serve residential uses, parking and loading areas adjacent to or within residential districts or adjacent to residential uses shall be designed to minimize disturbance of residents by the erection between the uses of a sight-obscuring fence of not less than five (5) feet nor more than six (6) feet in height except where vision clearance is required.

(3) Curbs and wheel stops. Parking spaces along the outer boundaries of a parking lot shall be contained by a curb or wheel stop at least six (6) inches high and set back a minimum of four (4) feet from the sidewalk line, or by a bumper rail set back a minimum of one (1) foot from the sidewalk.

(4) Artificial lighting. Artificial lighting which may be provided shall be deflected so as not to shine or create glare in any residential district or on any adjacent dwelling.

(5) Interior access lanes. Interior access lanes shall be of sufficient width for all vehicle turning and maneuvering.

(6) Maneuvering space. Except for dwellings, parking spaces shall be located and served by a driveway so that their use will require no backing movements or other maneuvering within a street right-of-way other than an alley.

(7) Service drives.

a. Service drives to off-street parking areas shall be designed and constructed to facilitate the flow of traffic, and to provide maximum safety of traffic access and egress and maximum safety for pedestrians and vehicular traffic on the site. The number of service drives shall be limited to the minimum that will allow the property to accommodate the traffic to be anticipated.

b. Service drives shall not be more than twenty-four (24) feet in width and shall be clearly and permanently marked and defined through the use of rails, fences, walls or other barriers or markers on frontage not occupied by service drives.

c. Service drives on the same lot frontage shall be separated by a minimum length of curb of thirty (30) feet. For every foot by which the lot frontage exceeds one hundred (100) feet, the minimum required length of curb shall be increased by one (1) foot, up to a maximum requirement of two hundred (200) feet. In the case of a corner lot, service drives shall be located not closer than thirty (30) feet to the intersecting street line.

d. The access to a service drive from a street shall be located not closer than fifteen (15) feet to a side lot line, except that a common service drive to two (2) adjacent properties with width not exceeding twenty-four (24) feet may be provided at the common lot line.

e. Service drives shall have a minimum vision clearance area formed by the intersection of the driveway center line, the street right-of-way line, and a straight line joining said lines through points thirty (30) feet from their intersection. (Prior code 16-142)

Sec. 16-6-130. Completion time for improvements.

Required parking spaces shall be improved as required and made available for use before the final inspection is completed by the Building Official. An extension of time may be granted by the Building Official, provided that a letter of credit, or its equivalent, is posted equaling one and one-half (1½) times the cost to complete the improvements as estimated by the Building Official, and provided that the parking space is not required for immediate use. In the event the improvements are not completed within one (1) year's time, the letter of credit or its equivalent shall be forfeited and the improvements thenceforth constructed under the direction of the City. (Prior code 16-143)

ARTICLE VII

General Regulations

Sec. 16-7-10. Reasonable interpretation.

Nothing contained herein shall be so construed to prohibit intermittent, children-oriented activities such as selling lemonade from a streetside lemonade stand. (Prior code 16-161)

Sec. 16-7-20. Accessory uses.

Accessory uses shall comply with all requirements for the principal use except where specifically modified by this Chapter, and shall also comply with the following limitations:

(1) A greenhouse or hothouse may be maintained accessory to a dwelling only if there are no sales from the premises.

(2) A guest house may be maintained in a residential district accessory to a dwelling, provided that such guest house is used for the occasional housing of guests of the occupants of the principal

dwelling, and so long as such guest house is not used for commercial purposes and no charge is made for the use of said premises.

(3) No part of any accessory building shall be located closer than ten (10) feet to any principal structure, either on the same lot or on an adjacent lot.

(4) Accessory buildings on corner lots shall be set back from the side street a distance not less than that required for the principal building.

(5) Accessory structures and uses shall comply with the yard and bulk regulations applicable in the district in which they are located as set forth under Section 16-2-60 of this Chapter. (Prior code 16-162)

Sec. 16-7-30. Home occupations.

Home occupations shall be allowed as a permitted accessory use governed by the following regulations:

(1) Home occupations must be clearly secondary to the use of the building as a residence and shall not occupy more than twenty-five percent (25%) of the total floor area of the main building; or if located in an accessory building, shall not occupy more than five percent (5%) of the total lot area.

(2) Home occupations shall be operated entirely from an enclosed structure with no exterior storage of materials or equipment.

(3) There shall be no visible evidence of the operation, other than signage in conformance with the sign ordinance, and it shall not change the residential character thereof.

(4) The residential building includes complete residential facilities, i.e., kitchen, living room, bathroom and bedroom.

(5) When the home occupation is in use, the residential building is occupied by a full-time resident.

(6) The operation shall not generate objectionable traffic in the area, and off-street parking must be provided to accommodate all needs created by the home occupation; however, in no case shall the number of additional parking spaces provided for the home occupation exceed the number of bedrooms in the residence.

(7) The operation shall not be objectionable due to odor, dust, smoke, noise, vibration or other similar impacts.

(8) The following uses, because of their tendency to go beyond the limits permitted for home occupations and thereby impair the use and value of the residential area, shall not be permitted as home occupations: auto repair or motorized implement repair; dance, music or other types of instruction (if more than four [4] students are being instructed at one [1] time); dental offices; medical offices; the painting of vehicles, trailers or boats; private schools with organized classes; motor vehicle towing operation; barber shops having more than one (1) chair, beauty shops having

more than one (1) chair; welding shops; nursing homes; and pawnbrokering. (Prior code 16-163; Ord. 12-03 §2, 2012)

Sec. 16-7-40. Maintenance of requirements.

No lot area, yard or other open space, or required off-street parking or loading area existing on or after the effective date of the ordinance codified herein shall be reduced in area, dimension or size below the minimum required by this Chapter; nor shall any lot area, yard or other open space, or off-street parking or loading area which is required by this Chapter for one (1) use, be used as the lot area, yard or other open space, or off-street parking or loading area requirement for any other use. (Prior code 16-164)

Sec. 16-7-50. Exception to lot size requirements.

If, at the time of passage of the initial ordinance codified herein, a lot, or the aggregate of contiguous lots or land parcels held in a single ownership, has an area or dimension in which the property is located, the lot or aggregate holdings may be occupied by any use permitted outright in the district subject to the other requirements of the district. (Prior code 16-165)

Sec. 16-7-60. Exceptions to yard requirements.

The following exceptions to the front yard requirement for dwellings abutting local streets, not including collector or arterial streets, are authorized for a lot in any district:

(1) If there are dwellings on both abutting lots with front yards of less than the required depth for the district, the front yard for the lot need not exceed the average front yard of the abutting dwellings.

(2) If there is a dwelling on one (1) abutting lot with a front yard of less than the required depth for the district, the front yard for the lot need not exceed a depth one-half (½) way between the depth of the abutting lot and the required front yard depth. (Prior code 16-166)

Sec. 16-7-70. Vision clearance areas.

(a) A vision clearance area shall contain no plantings, walls (other than retaining walls), structures or temporary or permanent obstructions exceeding two and one-half (2½) feet in height, measured from the top of the curb or existing grade unless said structure or obstructions are more than eighty percent (80%) open.

(b) Retaining walls necessary due to steep grade shall be permitted in the vision clearance area upon approval of the Zoning Administrator.

(c) The minimum distance establishing the size of the vision clearance area shall be thirty (30) feet. (Prior code 16-167)

Sec. 16-7-80. Screening.

(a) Exterior activity areas, such as parking areas and storage areas, shall be screened by means of plant materials, earth mounding, architectural screens or siting so as to provide visual and aural separation between these elements and adjacent property.

(b) Screening shall not exceed six (6) feet in height, except that salvage junkyards shall be screened with an eight-foot-high opaque solid fence or earth mounding so as to provide visual and aural separation between such use and adjacent areas. (Prior code 16-168)

Sec. 16-7-90. Principal buildings on same lot.

No part of a principal building shall be located closer than ten (10) feet to any other principal building on the same lot. (Prior code 16-169)

Sec. 16-7-100. Renting of rooms.

The renting of rooms to one (1) or two (2) persons not members of the family residing in the same dwelling unit may be permitted as an accessory use, provided that the following conditions are met:

(1) Quarters used by the roomers must not be more than one-third ($\frac{1}{3}$) of the total floor area of the dwelling unit; and

(2) The dwelling unit must have only one (1) meter for each utility. (Prior code 16-170)

Sec. 16-7-110. Temporary uses.

The following uses of land are permitted in each zoning district (unless restricted to particular zoning districts) subject to the applicable regulations of the district in which the use is permitted, and to the specific regulations and time limits which follow:

(1) Christmas tree sales in any nonresidential district for a period not to exceed forty-five (45) days. Display of Christmas trees need not comply with the yard and setback requirements of this Chapter, provided that no tree shall be displayed within a vision clearance area;

(2) Contractors' office quarters and equipment sheds accessory to a construction project, to continue only during the duration of such project;

(3) Real estate offices incidental to new housing developments to continue only until the sale or lease of all lots in the development, but not exceeding one (1) year and subject to renewal upon application to the City; and

(4) Temporary uses and activities not to exceed three (3) consecutive days, such as sidewalk sales, garage sales, block parties and other special events subject to provisions of other applicable ordinances. (Prior code 16-171)

Sec. 16-7-120. Child care facility outdoor play areas.

Child care facility outdoor play areas shall not be located in front yards, and shall be fenced as follows:

- (1) Outdoor play areas serving family care homes shall be enclosed by a fence at least forty-two (42) inches in height.
- (2) Outdoor play areas serving child care centers shall be enclosed by a solid fence six (6) feet in height. (Prior code 16-172)

Sec. 16-7-130. Salvage yards, kennels and feedlots; setbacks.

(a) Salvage junkyards and kennels shall be located a minimum of six hundred sixty (660) feet from any residential district.

- (b) Feedlots shall not be permitted. (Prior code 16-173)

Sec. 16-7-140. Drive-in facilities.

(a) Any use permitted in a zoning district which intends to conduct a portion or all of its business with persons desiring to remain in their automobiles, or which allows products to be consumed on the premises outside the principal building, and which is not subject to the special review provisions of this Chapter or is not a part of a planned unit development, must submit a site plan including screening to be reviewed and approved by the Planning Commission.

(b) In reviewing and approving the site plan for such a use, the Planning Commission must be satisfied that the traffic circulation on and adjacent to the site conforms to the following criteria:

- (1) Arranged so that internal pedestrian and vehicular movements are compatible and traffic hazards are minimized; and
- (2) Arranged so as to avoid hazardous or adverse effects on adjacent sites and streets. (Prior code 16-174)

Sec. 16-7-150. Separation of certain uses.

(a) None of the following permitted uses may be established, operated or maintained within three hundred (300) feet of a residential district, a church and/or a school meeting all requirements of the compulsory education laws of the State:

- (1) Adult bookstore;
- (2) Adult entertainment or amusement;
- (3) Adult photo studio; and
- (4) Adult theater.

(b) Not more than two (2) of the following permitted uses may be established, operated or maintained within one thousand (1,000) feet of each other:

- (1) Adult bookstore;
- (2) Adult entertainment or amusement;
- (3) Adult photo studio; and
- (4) Adult theater. (Prior code 16-175)

Sec. 16-7-160. Exception to building height regulations.

The height of chimneys, radio and television towers, wind chargers, cooling towers, elevator bulkheads, fire towers, monuments, stacks, stage towers or scenery lofts, tanks, water towers, ornamental towers, spires, grain elevators and other necessary mechanical appurtenances may exceed the building height regulations subject to approval as a special review use. Such exception shall be further subject to the following review criteria:

- (1) Provision for adequate light and air;
- (2) Effect upon views from neighboring properties;
- (3) Safety in case of structural collapse; and
- (4) Provision for adequate firefighting. (Prior code 16-176)

Sec. 16-7-170. Unobstructed yards.

Every part of a required yard shall be open to the sky, unobstructed by any structure, except as provided for in Sections 16-7-180 and 16-7-190 below. (Prior code 16-177)

Sec. 16-7-180. Accessory buildings.

Accessory buildings shall not occupy more than thirty percent (30%) of the area of a required yard. Accessory buildings may be built in a front yard only upon finding of the Zoning Administrator that the topography of the site precludes reasonable location within the rear or side yards. In such cases, the Zoning Administrator will also determine the appropriate setback. (Prior code 16-178)

Sec. 16-7-190. Projections into required yards.

(a) Terraces, uncovered porches, platforms, decks and ornamental features which do not extend more than three (3) feet above the floor level of the ground story may project into a required rear or side yard, provided that these projections are at least five (5) feet from the rear or side lot line.

(b) Open balconies may project into a required side or rear yard.

(c) Cornices, eaves, canopies, sunshades, gutters, chimneys, flues, belt courses, leaders, sills, pilasters, lintels, ornamental features and other similar architectural features may project not more than three (3) feet into any required yard.

(d) Projections shall not extend or encroach into any easement or right-of-way. (Prior code 16-179)

Sec. 16-7-200. Cemeteries.

Cemeteries shall have a minimum size of five (5) acres. (Prior code 16-180)

Sec. 16-7-210. Usable open space.

(a) Usable open space is land which is free of buildings, structures, parking lots and other substantial improvements which are not directly related to the function of the open space.

(b) The following examples are listed by way of illustration to indicate what may be counted as usable open space within the meaning of this Section:

(1) Outdoor swimming pools, swimming pool areas, hard surface recreational areas and other recreational areas, provided that these areas are unenclosed except for fences, canopies, bath houses or other minor structures;

(2) Driveways that do not serve three (3) or more parking spaces;

(3) Roof gardens; and

(4) Bike paths and sidewalks.

(c) The following examples are listed by way of illustration to indicate what may not be counted as usable open space within the meaning of this Section:

(1) Public or private rights-of-way for streets or highways;

(2) Area covered by a building, except as listed in Subsection (a) above; and

(3) Open parking areas except as listed in Subsection (a) above. (Prior code 16-181)

Sec. 16-7-220. Fences, hedges and walls.

(a) A fence, hedge, wall, column, pier, post or any similar type structure, or any combination of such structures, may be permitted in the required yards of the various districts, subject to the following conditions and requirements. It is intended that these conditions and requirements shall provide privacy and protection, and screening and accenting of shrubs and landscaping, without unduly interfering with the view from neighboring properties or jeopardizing the safety of pedestrians and vehicles.

(b) All fences and walls are subject to Building Code requirements.

- (c) It shall be the responsibility of the property owner to locate all property lines.
- (d) No fence, hedge or wall may extend beyond or across a property line unless in joint agreement with the abutting property owner.
- (e) No fence, hedge or wall shall be placed nearer than eighteen (18) inches to any public sidewalk, unless by written permission of the Building Official.
- (f) No barbed wire or electrically charged fence shall be permitted, except as follows:
 - (1) Temporary fences on construction sites may be as high as required to protect the property during the period of construction and may have barbed wire not less than eight (8) feet above the ground.
 - (2) In the resource districts (RCE), barbed wire and/or an electrically charged fence may be permitted as an internal fence (i.e., not on the periphery of the property) used to contain livestock.
- (g) No fence, wall or hedge shall exceed six (6) feet in height except as required for screening, recreational purposes approved by the Planning Commission, or unique security requirements approved by the Planning Commission.
- (h) No fence, wall or hedge exceeding four (4) feet in height shall be located in any required front yard.
- (i) Regardless of the provisions of Subsections (g) and (h) above, no fence, wall (except for retaining walls) or hedge exceeding two and one-half (2½) feet in height shall be located in any vision clearance area of a street intersection unless said fence, wall or hedge shall be more than eighty percent (80%) open.
- (j) No fence, wall or hedge shall be located so as to extend into street or alley rights-of-way. (Prior code 16-182)

Sec. 16-7-230. Horses.

Riding horses for use of occupants of a lot and their guests may be kept as a permitted accessory use in the resource district, provided that at least one (1) acre of pasture area is available on the same lot for each horse. (Prior code 16-183)

Sec. 16-7-240. Lighting fixtures.

Any light used for the illumination of parking areas, off-street loading areas, swimming pools or any other purpose must be designed and arranged so that the beams or rays of light will not shine directly onto abutting property. (Prior code 16-184)

Sec. 16-7-250. Swimming pools.

A swimming pool may be permitted in any district as an accessory use subject to the following additional requirements:

(1) No public or private swimming pool may be located in any required front yard or side yard abutting a street. No swimming pool shall be located closer than ten (10) feet to any side or rear lot line.

(2) Every swimming pool must be completely surrounded by a fence or wall not less than five (5) feet in height with no openings large enough to permit children to pass through other than gates or doors that can be fastened to protect against entry. A dwelling house or accessory building may be used as part of such required enclosure.

(3) All gates or doors opening through such enclosures must be equipped with a self-closing and self-latching device for keeping the gate or door securely closed at all times when not in actual use.

(4) Swimming pool locations shall conform to the standards and restrictions of the National Electrical Code. (Prior code 16-185)

Sec. 16-7-260. Mineral resources.

Mining, extraction, milling, smelting and related processing of mineral resources shall be subject to the following requirements:

(1) All mining and prospecting operations shall apply for a special review use permit as set forth in this Chapter.

(2) All mining and prospecting operations shall provide the City with submittals as required by the Colorado Mined Land Reclamation Board's Rules and Regulations, effective July 1978, and as amended.

(3) All mining and prospecting operations shall supply the City with data and plans as to: the operations and use of public roads, including vehicle size and loaded and unloaded weight, frequency, route and other pertinent data; ambient and fugitive dust control; off-site and on-site drainage considerations; preservation of historic resources as more specifically set forth in the City Design Guidelines Ordinance; security systems, such as safeguarding the site from animals, children and others; a plan for mitigating the costs of any inordinate amount of road use; any engineering calculations of existing or proposed bridge strength; and any other data deemed pertinent by the City.

(4) The City shall inform the Colorado Mined Land Reclamation Board of its decision with respect to approval, approval with changes or disapproval.

(5) The City may at its sole discretion approve the special use permit, subject to the State also issuing appropriate approvals.

(6) The City may set conditions in the special exception use permit as it deems necessary to protect the health, safety and welfare of the people.

(7) Special review use permits for this operation are nontransferable.

(8) Adverse effects of the operation will be paid for by the applicant. (Prior code 16-186)

Sec. 16-7-270. Salvage yards, screening.

Salvage yards shall be screened from view by natural terrain, dense foliage and/or adequate fencing. (Prior code 16-187)

Sec. 16-7-280. Mobile homes.

Mobile homes shall be located only in mobile home parks and as otherwise specified in the mobile home ordinance of the City. (Prior code 16-189)

Sec. 16-7-290. Special review uses; historic landmarks.

It is the intent of this Chapter to encourage preservation of historic structures, including remnants thereof, as established by historic documentation, including but not limited to the National Park Service National Register of Historic Places Registration Form, dated 1987 and revised 1990. Therefore, subject to the provisions, procedures and criteria of Article IV of this Chapter, the City Council, upon recommendation of the Planning Commission and the Historic Preservation Commission, may permit any use or uses to be conducted on nonresidential (as established by character, design, function and prior use), historic structures as special review uses if the City Council finds such use or uses appropriate and necessary to achieve the goal of historic preservation. (Prior code 16-190)

Sec. 16-7-300. Site plan and survey requirements.

(a) Purpose. The purpose of this Section is to ensure compliance with the zoning and development standards of this Chapter.

(b) Applicability. Site plans and boundary line surveys shall be required before issuance of a building permit for any use by right except for:

- (1) Interior improvements performed within a structure or building; or
- (2) Additions to structures or buildings that do not increase the existing building footprint.

(c) Site plan requirements. A site plan required under this Section shall illustrate, by scaled drawing, the proposed layout of a lot, showing all elements of site development, including at a minimum the following information:

- (1) All setbacks enumerated in Section 16-2-60 of this Chapter.
- (2) Existing and proposed building locations and building height.
- (3) Driveway route.
- (4) Grading and drainage plans, showing existing and proposed topography.
- (5) Location of existing and proposed utilities.

(d) Boundary line survey. A boundary line survey required under this Section shall be prepared by a Colorado-licensed professional land surveyor and shall illustrate the boundaries of the property for which a building permit is sought in conformance with Section 38-51-106, C.R.S.

(1) A survey plat prepared not more than five (5) years prior to the date of building permit application is acceptable, provided that the property lines are physically identified on the property by a Colorado-licensed professional land surveyor prior to the initial or footing inspection by the City and no property boundaries or recorded or apparent easements have been altered since the original date of the survey plat.

(2) Submittal of a survey plat in conformance with this Section shall not constitute satisfaction of the requirements for deposit of surveys set forth in Section 38-51-107, C.R.S.

(e) Approval criteria. A site plan and boundary line survey shall be reviewed and approved by the Zoning Administrator within thirty (30) days of submittal of a complete application if such site plan and survey meet all the criteria set forth in this Section and all applicable zoning and development standards set forth in this Chapter. For purposes of commencing the thirty-day review period, the Zoning Administrator shall determine if the application is complete, based on the requirements of this Section. Any incomplete application shall be returned to the applicant with specific instructions for completion. If the Zoning Administrator fails to render a decision within said thirty-day period, the site plan and survey plat shall be deemed approved and a building permit shall be issued. (Prior code 16-191)

Sec. 16-7-310. Medical marijuana center.

A medical marijuana center shall be subject to the following requirements:

(1) No medical marijuana center shall be located within a structure that contains a residential unit or is also used as a residence.

(2) A medical marijuana center shall be operated from a permanent location. No medical marijuana center shall be permitted to operate from a movable, mobile or transitory location.

(3) The provisions of this Section do not protect operators, employees, customers and clients of a permitted medical marijuana center from prosecution pursuant to any laws that may prohibit the cultivation, sale, use or possession of controlled substances. In addition, as of the date of the adoption of this Section, the cultivation, sale, possession, distribution and use of marijuana remain violations of federal and state law (except for conduct covered by Amendment 20), and this Section affords no protection against prosecution under such federal and state laws. Operators, employees, customers and clients of a permitted medical marijuana center assume any and all risk and any and all liability arising or resulting from the operation of the center under any state or federal law. Further, to the greatest extent permitted by law, any actions taken under the provisions of this Section by any public officer, elected or appointed official, employee, attorney and agent of the City shall not become a personal liability of such person or of the City.

(4) To the extent the State has adopted or adopts in the future any additional or stricter law or regulation governing the sale or distribution of marijuana for medical use, the additional or stricter

regulation shall control the location, establishment or operation of any medical marijuana center in the City. (Prior code 16-192; Ord. 12-16 §3, 2012)

Sec. 16-7-320. Sound amplification equipment in HDG or GGG zoning districts.

(a) As used in this Section, *sound amplification equipment* means any loudspeaker, public address system or other electrically amplified sound equipment used for the amplification of the human voice or music which is clearly audible from the property boundary or any public street or right-of-way.

(b) It shall be unlawful for any person to use or cause to be used any sound amplification equipment in the Historic Downtown Gaming (HDG) or the Gregory Gulch Gaming (GGG) zoning districts without first having applied for and obtained a sound amplification permit from the City as provided in this Section.

(c) There shall be a maximum of one (1) sound-amplification permit issued within each of the HDG and GGG zoning districts per calendar year. The maximum number of permits issued per calendar year may be adjusted by resolution of City Council, following a public hearing thereon.

(d) Nothing in this Section shall be construed to authorize or permit the use of sound-amplification equipment within any other zoning district of the City.

(e) Applications for permits for the use of sound-amplification equipment and applications for permit renewals shall be filed with the City Clerk on forms supplied by the City. Application fees and renewal fees shall be established by resolution of the City Council.

(f) Each permit application filed with the City Clerk shall contain the following information:

- (1) The name, home address, telephone number and email address of the applicant;
- (2) The business address of the applicant (if applicable);
- (3) The addresses or locations where the sound-amplification equipment is proposed to be used;
- (4) If applicable, the written consent of the property owners of the locations where the sound-amplification equipment is proposed to be used, consenting to the placement or installation of the sound-amplification equipment;
- (5) A general description of the sound-amplification equipment proposed to be used;
- (6) The maximum sound-producing power of the sound amplification equipment to be used, including the wattage to be used, the volume in decibels of the sound which will be produced and the approximate maximum distance (in feet) sound will be projected from the sound-amplification equipment;
- (7) The name, address, telephone number and email address of the person who will have direct charge of the sound-amplification equipment;

- (8) The purpose for which the sound-amplification equipment will be used;
 - (9) The proposed hours of operation of the sound-amplification equipment;
 - (10) The number of days of proposed operation of the sound-amplification equipment; and
 - (11) Other relevant information concerning the proposed sound-amplification equipment, process and/or events for which the sound-amplification equipment will be used.
- (g) Each permit renewal application shall contain the information requested on the forms supplied by the City.
- (h) Upon receiving a completed application for a permit or permit renewal for the use of sound-amplification equipment, the City Clerk shall refer the application to the Community Development Director, and the City shall thereafter conduct an investigation and shall approve or conditionally approve the application for a permit or permit renewal if it is determined that all the requirements of this Section are met and, if it appears from the information contained in the application and such supplemental information as may be presented to or obtained by the Community Development Director during the course of the investigation, that the proposed use of the sound-amplification equipment complies with the regulations contained in this Section. Each permit or permit renewal issued shall be nontransferable and valid for the period of time set forth on the face of the permit, not to exceed a period terminating on the last day of the calendar year in which the permit or permit renewal is conditionally approved by the Community Development Director.
- (i) In granting a permit or permit renewal, the Community Development Director shall specify the hours during which the sound-amplification equipment may be used after considering the needs of the applicant, the area or areas in which the sound will be emitted and the effects of such use on the public health, safety and welfare. In no event shall any permit or permit renewal issued by the Community Development Director authorize the use of sound-amplification equipment past 10:00 p.m. or before 10:00 a.m. in the HDG or GGG zoning districts.
- (1) The Community Development Director may attach such other reasonable conditions on the use of the sound-amplification equipment as may reduce friction among competing uses within the zoning district in which the permit is to be issued or will otherwise serve the purposes of this Section.
 - (2) Upon issuance, the permit shall be valid only for the period and locations specified in the permit.
- (j) An applicant may appeal the Community Development Director's denial of a permit to the City Manager. The appeal shall be made in writing, stating the grounds for appeal, within five (5) working days following the decision of the Community Development Director. The City Manager shall issue a written decision regarding the appeal within ten (10) working days following the date on which the applicant's written appeal is received by the City Manager, and a copy of such written decision shall be provided to the applicant.
- (k) The use of sound-amplification equipment in the City shall be subject to the following regulations:

- (1) The only sounds permitted are music and/or human speech;
 - (2) The human speech and/or music amplified shall not be profane, lewd or slanderous;
 - (3) The volume of amplified sound shall not exceed the maximum permissible noise levels set forth in Section 7-2-210 of this Code; and
 - (4) The sound amplification equipment shall not be used between the hours of 10:00 p.m. and 10:00 a.m.
- (l) The Community Development Director may revoke or fail to renew any permit issued pursuant to this Section on any of the following grounds:
- (1) The sound-amplification equipment has been used contrary to the regulations contained in this Section or the terms of the permit;
 - (2) The applicant has made a misrepresentation of a material fact in the application;
 - (3) The use of the sound-amplification equipment results in traffic congestion or threatens public health, safety or welfare; or
 - (4) The volume of amplified sound has exceeded the maximum permissible noise levels set forth in Section 7-2-210 of this Code.
- (m) Notice of the revocation or nonrenewal shall specify the effective date of the revocation or nonrenewal, which shall be no less than fifteen (15) calendar days following the date of notice, and a copy of the notice of revocation or nonrenewal shall be given to the permit holder in writing. If the notice is personally served upon the permit holder, it shall be effective immediately upon service. If the notice of revocation or nonrenewal is delivered by mailing, it shall be effective on the third day following the deposit of the notice in the United States mail. The permit holder may appeal the action of the Community Development Director to the City Manager by filing a notice of appeal with the City Clerk within five (5) calendar days after the effective date of the revocation or nonrenewal. The City Manager shall issue a written decision regarding the appeal within ten (10) working days following the date on which the written appeal is received by the City Manager, and a copy of such written decision shall be provided to the permit holder. If a notice of appeal is not filed within the five-day period, the revocation or nonrenewal shall become final. (Prior code 16-193; Ord. 12-07 §2, 2012)

ARTICLE VIII

Board of Adjustment

Sec. 16-8-10. Established.

The Board of Adjustment is hereby established. The word *Board*, when used in this Article, shall be construed to mean the Board of Adjustment. (Prior code 16-211)

Sec. 16-8-20. Appointment of members.

The Board of Adjustment shall consist of five (5) members who shall be appointed by the City Council. None of the members may be current members of the Planning Commission. (Prior code 16-212)

Sec. 16-8-30. Members; term; associate members.

(a) Appointments to the Board shall be for a period of three (3) years, except that, when vacancies occur prior to the expiration of a regular term, they shall be filled in the same manner as regular appointments but shall serve only until the expiration of the term in which the vacancy occurred.

(b) In addition to the regular members of the Board, the City Council may appoint two (2) associate members for staggered three-year terms. In the event that any regular member is temporarily unable to act owing to absence from the City, illness, interest in a case before the Board or any other cause, his or her place may be taken during such temporary disability by an associate member who shall enjoy full voting privileges. (Prior code 16-213)

Sec. 16-8-40. Chairperson.

Members of the Board shall elect from among their members by a majority vote a Chairperson to serve for a term of one (1) year. (Prior code 16-214)

Sec. 16-8-50. Removal from office.

The City Council shall have the power to remove any member from the Board for cause after a public hearing. (Prior code 16-215)

Sec. 16-8-60. Number of votes required for case approvals.

The concurring vote of four (4) members of the Board shall be required to approve variances and to overturn decisions made by the Zoning Administrator presented to the Board. Any other matters shall require a majority vote of members present of the Board. (Prior code 16-216)

Sec. 16-8-70. Rules of conduct; meetings.

The Board shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this Chapter. The meetings shall be held at the call of the Chairperson and at such other times as the Board may determine. The chair or, in his or her absence, the acting Chair, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public. (Prior code 16-217)

Sec. 16-8-80. Records.

The Board shall keep minutes of its proceedings showing the vote of each member upon each decision; or, if absent or failing to vote, indicating that. It shall keep records of its examinations and other official actions, all of which shall be a public record and filed immediately in the office of the Board. (Prior code 16-218)

Sec. 16-8-90. Appeals.

(a) Appeals to the Board concerning any order, requirement, decision or determination made by the Zoning Administrator may be taken by any persons aggrieved who are affected by such action of the Zoning Administrator, or by the City Manager on behalf of the City. Such appeals must be taken within thirty (30) days of the action being appealed.

(b) The appellant shall file with the Zoning Administrator a notice of appeal specifying the grounds for such appeal. Accompanying the notice of appeal shall be a filing fee which shall be one-half (½) of the zoning amendment fee (said fee may be waived by the City Council upon application and demonstration of hardship by the appellant). The Zoning Administrator shall immediately transmit to the Board the appellant's notice of appeal and all papers constituting a record of action upon which the appeal was taken.

(c) The Board shall conduct a public hearing of the appeal, at which the appellant may appear in person or by agent or attorney. The Board may affirm, reverse wholly or partly or modify the action and to that end shall have all powers of the Zoning Administrator. (Prior code 16-219)

Sec. 16-8-100. Appeal stays actions.

An appeal stays all proceedings and furtherance of the action appealed unless the officer from whom the appeal was taken certifies to the Board, after the notice of appeal was filed with him or her, that, by reason of fact stated in the certificate, the stay would, in his or her opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed, other than by a restraining order which may be granted by the Board or by a court of record on application, on notice to the officer from whom the appeal was taken and on due cause shown. (Prior code 16-220)

Sec. 16-8-110. Powers.

The Board shall have the power to:

(1) Hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, decision or determination made by an administrative official based on or made in the enforcement of this Chapter.

(2) Hear and decide, grant or deny applications for variances from the provisions of this Chapter. In granting any variance, the Board may attach such reasonable conditions and safeguards as it deems necessary to implement the purposes of this Chapter. The Board may grant a variance only if it makes findings that all of the following requirements, insofar as applicable, have been satisfied:

a. That there are unique physical circumstances or conditions such as irregularity, narrowness or shallowness of lot, or exceptional topographical or other physical conditions peculiar to the affected property;

b. That the unusual circumstances or conditions do not exist throughout the neighborhood or district in which the property is located;

c. That, because of such physical circumstances or conditions, the property cannot reasonably be developed in conformity with the provisions of this Chapter;

d. That such unnecessary hardship has not been created by the applicant;

e. That the variance, if granted, will not alter the essential character of the neighborhood or district in which the property is located, or substantially or permanently impair the appropriate use or development of adjacent property; and

f. That the variance, if granted, is a minimum variance that will afford relief and is the least modification possible of the provisions of this Chapter which are in question;

(3) Hear and decide such other matters as the City Council may prescribe by ordinance.

(4) Hear and decide whether a specific use is expressly permitted in a use group as specified in Article II of this Chapter. (Prior code 16-221)

ARTICLE IX

Administration and Enforcement

Sec. 16-9-10. City Council powers.

(a) The City Council has sole responsibility for changes in the zoning map and in this Chapter. The City Council shall not hear complaints or decide questions of interpretation or enforcement which are reserved for the Board of Adjustment.

(b) The City Council shall have sole responsibility for final determination of conflicting regulations between Article XI of this Chapter and other provisions of this Chapter. (Prior code 16-241)

Sec. 16-9-20. Planning Commission duties.

(a) It shall be the responsibility of the Planning Commission to hear all changes in this Chapter as prescribed by law and this Chapter, and to recommend action on such charges to the City Council.

(b) The Planning Commission has no authority to approve variances; requests for variances shall be sent forward to the Board of Adjustment for hearing.

(c) The Planning Commission shall coordinate all aspects of a proposal related to historical preservation with the Historical Preservation Commission. (Prior code 16-242)

Sec. 16-9-30. Board of Adjustment duties.

The Board of Adjustment shall hear and decide all questions on appeal from decisions of the Zoning Administrator, and all other questions as provided in Article VIII of this Chapter. (Prior code 16-243)

Sec. 16-9-40. Historical Preservation Commission duties.

The Historical Preservation Commission shall coordinate all aspects of a proposal related to zoning with the Planning Commission. (Prior code 16-244)

Sec. 16-9-50. Zoning Administrator responsibility.

The Zoning Administrator is charged with the interpretation of and the enforcement of this Chapter. Appeals from a decision of the Zoning Administrator shall be presented to the Zoning Administrator, who shall forward such appeal with all pertinent information to the Board of Adjustment for hearing. (Prior code 16-245)

Sec. 16-9-60. Zoning Administrator powers and duties.

- (a) The Zoning Administrator is designated to administer the enforcement of this Chapter.
- (b) The Zoning Administrator shall have the power to make inspections of buildings and premises to carry out the duties of the enforcement of this Chapter, subject to special provisions where stipulated in this Chapter.
- (c) In the event that the Zoning Administrator and Building Official positions are not assigned to the same individual, issuance of building permits and certificates of occupancy by the Building Official shall require approval by the Zoning Administrator prior to said license.
- (d) The Zoning Administrator is under no circumstances permitted to grant an exception to the actual meaning of any clause, order or regulation contained in this Chapter to any person making application to construct, move, alter or use either a building, a structure or land.
- (e) The Zoning Administrator is under no circumstances permitted to make changes in this Article or to vary the terms of this Chapter in carrying out his or her duties as Zoning Administrator. (Prior code 16-246)

Sec. 16-9-70. Building permits.

- (a) It shall be unlawful to begin the excavation for construction, moving, alteration or repair, except ordinary repair as defined in the Building Code, until the Building Official has issued for such work a building permit, in accordance with the requirements of this Chapter and the Building Code.
- (b) Every application for a building permit for construction, moving, alteration or change in the type of use or type of occupancy shall be accompanied by a written statement and plans or plots, drawn to scale, showing the following in sufficient detail to enable the Zoning Administrator to ascertain whether the proposed work or use is in compliance with the provisions of this Chapter. All such material is required in duplicate form and shall include:
 - (1) The actual shape, location and dimensions of the lot or building plot with sufficient information to locate the plot on the ground;
 - (2) The shape, size and location of all buildings or other structures to be erected, altered or moved; and of any other buildings or structures already on the plot;

(3) The existing and intended use of the plot and all structures upon it; and

(4) Such information concerning the plot or adjoining lots or other matters as may be essential for determining whether the provisions of this Chapter and other ordinances are being observed.

(c) If the proposed construction, moving, alteration or use of the land as set forth in the application is in conformity with the provisions of this Chapter, the Zoning Administrator shall approve issuance of the building permit.

(d) Issuance of a building permit shall in no case be construed as waiving any provision of this Chapter or of any other City ordinance.

(e) The Zoning Administrator shall approve issuance of a building permit when the conditions imposed by this Chapter are complied with by the applicant, regardless of the effect of such permit on contracts, such as deed covenants, deed restrictions or private agreements.

(f) If any application for a building permit is not approved by the Zoning Administrator, the cause for such disapproval shall be stated in writing.

(g) Plans submitted with an application for a building permit shall be reviewed and approved by all appropriate departments of the City. (Prior code 16-247)

Sec. 16-9-80. Certificate of occupancy.

(a) No building or structure authorized by a building permit shall be occupied and no change in occupancy of a building, part of a building or land shall be made until after the Zoning Administrator has issued a certificate of occupancy therefor. The certificate of occupancy shall not only state the information as required under the Building Code, but shall also state that the occupancy authorized has been approved by the Zoning Administrator as being in compliance with this Chapter. Occupancy other than that authorized in the certificate of occupancy shall be unlawful.

(b) Certificates of occupancy shall be applied for coincident with the application for a building permit, and shall be issued within ten (10) days after the erection or structural alteration of such building has been completed in conformity with the provisions of this Chapter. A record of all certificates shall be kept on file in the office of the Zoning Administrator and copies shall be furnished on request to any persons having a property or tenancy interest in the building affected.

(c) No building permit shall be issued before application has been made for a certificate of occupancy or before compliance. (Prior code 16-248)

Sec. 16-9-90. Use permits.

(a) A use permit is a document authorizing the existence of a nonconforming use, a special review use or a variance as these terms are defined herein. The issuance of a use permit may be prerequisite to the issuance of a building permit or certificate of occupancy, but shall not alleviate the requirement for a building permit or certificate of occupancy where this requirement would otherwise exist.

(b) A use permit is required for all nonconforming uses, all review uses and for all variances. A use permit may have a specified time limitation attached and may impose conditions other than those which are specifically set forth in this Chapter.

(c) The responsibility for issuance of a use permits is as follows:

(1) The Zoning Administrator shall issue use permits for all nonconforming uses as soon as practical following enactment of the ordinance codified herein, and the Zoning Administrator may rescind a use permit for a nonconforming use upon cessation of the use of the building or land as set out in Article III;

(2) The City Council may issue use permits for special review uses and planned unit developments; and

(3) The Board of Adjustment may issue use permits for variances.

(d) Following the issuance of a use permit, the Zoning Administrator shall ensure that, if the development is undertaken, it is completed in compliance with said permit. However, if a use permit has not been used within one (1) year after the date granted, the permit may be revoked by the Zoning Administrator. The owner shall be notified of any revocation in writing. The enforcement of use permits shall be coordinated with the provisions of the Building Code and vested rights ordinances. (Prior code 16-249)

Sec. 16-9-100. No permits prior to subdivision.

No building permit shall be issued on any property within the City for construction of a structure prior to the completion of the subdivision process if subdivision is required as set forth in the subdivision regulations. For purposes of this Section, the term *structure* shall not include fences, flagpoles or retaining walls. (Prior code 16-250)

Sec. 16-9-110. Temporary permits.

The Zoning Administrator shall approve temporary permits for buildings to be constructed and used for storage incidental to the construction of buildings on the property and for signs advertising a subdivision or tract of land or the lots thereon. (Prior code 16-251)

Sec. 16-9-120. Time limit on variance permits.

A building permit for a special review use or for a use involving a variance shall be void after six (6) months from the day of issuance if no substantial construction has taken place. (Prior code 16-252)

Sec. 16-9-130. Liability for damages.

This Chapter shall not be construed to hold the City or its authorized representatives responsible for any damage to persons or property by reason of inspection or reinspection authorized in this Chapter or failure to inspect or reinspect, or by reason of issuing a building permit as provided in this Chapter. (Prior code 16-253)

Sec. 16-9-140. Interpretation.

The provisions of this Article shall be held to be the minimum requirements fulfilling its objectives. Where the conditions imposed by any provision of this Article are less restrictive than comparable conditions imposed by any other provisions of this Article or of any other ordinance, resolution or regulation, the provisions which are more restrictive shall govern. (Prior code 16-254)

Sec. 16-9-150. Violations.

(a) If the Zoning Administrator finds or if any person files with him or her a complaint in writing alleging that any of the provisions of this Article are being violated, he or she shall immediately investigate and, when necessary, give written notice to the person responsible to cease such violations forthwith.

(b) Written notice may be delivered in person or by certified mail to the violator or to any person in charge of property where the violation is occurring.

(c) If the violation which is the subject of the notice delivered by the Zoning Administrator is not remedied within a reasonable time or a time set by said Zoning Administrator, action may be brought against the party in violation pursuant to this Article and any other appropriate legal process may be undertaken by the City to remedy the violation. (Prior code 16-255)

Sec. 16-9-160. Penalty for violation.

The owner of any land, building, premises or part thereof where anything in violation of this Chapter exists or is placed or maintained; any architect, builder or contractor who assists in the commission of any such violation, and all persons who violate or maintain any violation of any of the provisions of this Chapter or who fail to comply therewith or with any requirements thereof or who build in violation of any statement or plan submitted and approved thereunder, for each and every violation or noncompliance, shall be punished as set forth in Section 1-4-20 of this Code. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provisions of this Chapter is committed, continued or permitted by such person, and he or she shall be punished accordingly. (Prior code 16-256)

ARTICLE X

Amendments

Sec. 16-10-10. Authorization to initiate amendments.

An amendment to the text or the zoning map of this Chapter may be initiated by the City Council, by the Planning Commission or by application of a property owner or his or her authorized agent only at the regularly scheduled meetings. (Prior code 16-271)

Sec. 16-10-20. General procedure.

Amendments to this Chapter shall be in accordance with the laws of the State, which require the following action before adoption of any such amendment:

- (1) Study and recommendation on the proposed amendment by the Planning Commission; and
- (2) Completion of a public hearing before the City Council after at least fifteen (15) days' notice of the time and place of such hearing has been given by at least one (1) publication in a newspaper of general circulation within the City. (Prior code 16-272)

Sec. 16-10-30. Special procedure.

Before submitting a report and recommendation on any proposed amendment to this Chapter, the Planning Commission shall hold a public hearing on the proposed amendment with the following special conditions required:

- (1) A notice of said hearing shall be published in a newspaper of general circulation within the City at least fifteen (15) days prior to the hearing date.
- (2) For proposed amendments to the zoning district map, a written notice of said hearing shall be sent by first class mail, at least fifteen (15) days prior to the hearing date, to property owners within three hundred (300) feet of the area in question as such ownership is available in the City Clerk's office. In addition, a notice declaring that rezoning is being applied for shall be posted, at least fifteen (15) days prior to the hearing on the property proposed for rezoning, along the part of such property fronting on a street.
- (3) The Planning Commission, within thirty (30) days following the public hearing or within such time as is mutually agreed upon by the Planning Commission and the applicant, shall either recommend approval of the application, approval with modifications and/or conditions or denial of the application, with said recommendation of the Planning Commission being transmitted to the City Council. (Prior code 16-273)

Sec. 16-10-40. Exception for general revision.

When the zoning district map is in any way to be changed or amended incidental to or as a part of a general revision of the Zoning Ordinance, whether such revision is made by repeal of the existing Zoning Ordinance and enactment of a new Zoning Ordinance or otherwise, the notice by posting and mailing shall not be required. (Prior code 16-274)

Sec. 16-10-50. Declaration of policy for rezoning.

- (a) For the purpose of establishing and maintaining sound, stable and desirable development within the City, the rezoning of land shall be discouraged. Rezoning should only be considered if:
 - (1) The land to be rezoned was zoned in error and as presently zoned is inconsistent with the policies and goals of the City's comprehensive development plan;
 - (2) The area for which rezoning is requested has changed or is changing to such a degree that it is in the public interest to encourage a redevelopment of the area;
 - (3) The proposed rezoning is necessary in order to provide land for a community-related use which was not anticipated at the time of the adoption of the City's comprehensive development

plan, and such rezoning will be consistent with the policies and goals of the comprehensive development plan; or

(4) The rezoning would only permit development which, if evaluated as a proposed annexation under the annexation standards and procedures, would qualify for annexation.

(b) This declaration of policy for rezoning shall not control a rezoning which occurs incidental to a comprehensive revision of the City's zoning map. (Prior code 16-275)

Sec. 16-10-60. Minimum size of parcel.

No amendment changing the zoning classification of any lot, parcel or tract of land shall be adopted unless such lot, parcel or tract has seventy-five (75) feet of frontage on a public street; has seven thousand five hundred (7,500) square feet of area; or abuts on a lot, parcel or tract of land that has the same zoning classification as that which is proposed for the property which is the subject of the proposed amendments. (Prior code 16-276)

Sec. 16-10-70. Approval of amendment to zoning map.

In granting an amendment to the zoning map, upon the application by a property owner for such rezoning, the City Council may require the dedication of additional street rights-of-way where the nature of the proposed development warrants increased street width; and the Council may require permanent screen strips or other devices to minimize conflict with residential land use. (Prior code 16-277)

Sec. 16-10-80. Annexed territory.

(a) Zoning of land in the process of annexation may be done in accordance with the procedure and notice requirements of this Article. The proposed zoning ordinance shall not be passed on final reading prior to the date when the annexation ordinance is passed on final reading, but the ordinance annexing the property can also zone the property. If the zoning process is commenced prior to the effective date of the annexation ordinance, the legal protest area for rezoning shall be determined solely on geographic location, irrespective of whether the land in such legal protest area is within or without, or partly within and partly without, the City limits.

(b) Any area annexed shall be brought under the provisions of this Chapter and the map thereunder within ninety (90) days from the effective date of the annexation ordinance, irrespective of any legal review which may be instituted challenging the annexation. During such ninety-day period, or such portion thereof as is required to zone the territory, the City shall refuse to issue any building permit for any portion or all of the newly annexed area. (Prior code 16-278)

Sec. 16-10-90. Records of amendments.

The City Clerk shall maintain a record of amendments to the text and map of the ordinance codified in this Chapter in a form convenient for the use of the public. (Prior code 16-279)

ARTICLE XI

Historic Preservation

Sec. 16-11-10. Intent.

The City Council has determined that the economic, cultural and aesthetic standing of the City cannot be maintained or enhanced by disregarding the historical, architectural and geographical heritage of the City and by ignoring the destruction or defacement of its assets. This Article is intended to provide a means and guidelines to implement the City Council's goals. (Prior code 16-291)

Sec. 16-11-20. Purpose.

The purpose of this Article is to:

(1) Designate the entire City as an Historic District which encompasses the whole of the City, including all annexed areas regardless when annexed. The Historic District's boundaries may be amended by the City Council pursuant recommendation provided under Section 16-11-40 below or as otherwise provided under this Code;

(2) Designate, preserve, protect, enhance and perpetuate the Historic District and those structures which reflect outstanding elements of the City's cultural, artistic, social, economic, political, architectural, historic or other heritage;

(3) Foster civic pride in the beauty, value and accomplishments of the past;

(4) Stabilize or improve the aesthetic and economic vitality and values of such structures;

(5) Protect and enhance the City's attraction to tourists and visitors;

(6) Promote the use of the Historic District and outstanding historical or architectural structures for the education, stimulation and welfare of the people of the City;

(7) Promote creative and effective urban design; and

(8) Promote and encourage private ownership and utilization of buildings and other structures to the extent that the objectives listed herein can be attained. (Prior code 16-292)

Sec. 16-11-30. Definitions.

As used in this Article, the following words shall be construed to have the meanings defined below:

Certificate of appropriateness means a resolution approved by the Historic Preservation Commission at a regular or special meeting, which affirms the Commission's approval of the plans for construction as to their appropriateness of historic and architectural character.

Chairperson means the chairperson of the Historic Preservation Commission.

Design guidelines means guidelines promulgated by the Historic Preservation Commission and approved by the City Council outlining criteria for the review of applications for certificates of appropriateness. The full title of the design guidelines is *Standards and Design Guidelines of Central City*.

Features means furniture, fixtures or equipment of the mining or Victorian periods.

Historic District means an area designated by the City Council as conveying a sense of time and place due to the historic and architectural merits of the area, inclusive of architectural and landscape features.

Historic landmark means a structure, site or landscape feature either within or outside of the Historic District, designated by the City Council to be of outstanding historic or architectural significance.

Historic mining or Victorian landmark means an architecturally or historically significant interior space which remains substantially intact in terms of: (a) original configuration; (b) original volume; and (c) original architectural ornamentation and decoration; and which exhibits surviving original historical finishes or has the potential for research which could aid in the accurate restoration of such finishes.

Historic Preservation Administrator means a staff member responsible for the coordination of applications for certificates of appropriateness, historic surveys and other duties as directed by the City Manager to achieve the intent of this Article.

Historic Preservation Commission means the Historic Preservation Commission of the City, also known as the *Commission*.

Secretary means the secretary of the Historic Preservation Commission. (Prior code 16-293)

Sec. 16-11-40. District boundaries and landmarks.

(a) The Commission shall be responsible for recommending to the City Council changes in the boundaries of the Historic District, designation of historic landmark structures and designation of a historic mining or Victorian landmark. The Commission in its review shall use the following criteria:

- (1) An area or landmark must be identified with historic persons or events;
- (2) An area or landmark must embody distinguishing characteristics of architectural style;
- (3) An area or landmark must be representative of the work of a famous architect or builder;
and
- (4) An area or landmark must reflect the broad cultural, political, economic or social history of the community, State or Nation.

(b) Historic mining or Victorian landmark designation.

(1) No historic mining or Victorian landmark may be designated unless it is either: (a) a space to which the public has historically had access and it is an essential component feature of a structure which can remain economically visible; or (b) the owner of the structure containing the interior has requested its designation as an historic mining or Victorian landmark.

(2) Each designation of an historic mining or Victorian landmark shall specify in some detail which interior features are to be protected, and shall be accompanied by a file of photographs which permanently document such features. Protected features may not be altered without a certificate of appropriateness. Such features may be covered temporarily or removed and placed into protected storage only if the Commission has issued a certificate of appropriateness for such work.

(c) The Commission shall hold a public hearing, advertised at least fifteen (15) days prior to the hearing in a paper of local circulation, to solicit comments from interested and affected parties, before making a recommendation to City Council. (Prior code 16-294)

Sec. 16-11-50. Certificate of appropriateness.

(a) The Commission shall examine all plans for the erection, movement, demolition, reconstruction, restoration or alteration pursuant to Section 2-6-90 of this Code before a building permit is issued. Exceptions which shall not require a certificate of appropriateness are:

- (1) Repainting of a structure with the same colors for which the Commission has previously issued a certificate of appropriateness;
- (2) Repairs of a minor nature that do not affect the exterior appearance;
- (3) Normal maintenance;
- (4) Interior work if the building does not qualify for designation as an historic mining or Victorian landmark; and
- (5) Pruning or removing dead landscape materials.

(b) The Commission, in reviewing an application for a certificate of appropriateness, shall use the standards and a design guideline and consider the various aspects of design with emphasis on the following:

- (1) If the proposed changes negatively impact the historic and architectural features of the City;
- (2) To what extent existing historic and architectural features are maintained and enhanced; and
- (3) How the proposed changes relate to adjacent buildings and areas within the City.

(c) Owners who apply for a certificate of appropriateness for a commercially zoned property that is identified as a *contributing structure* (Section 18-2-30 of this Code) in the National Historic Landmark District Cultural Resource Re-Survey dated September 1998, where the proposed scope of

work results in more than a forty-percent restoration/modification of the exterior of a contributing structure, shall be required to provide to the Commission plans and a schedule for completion of an "interpretive product," including but not limited to a sign, a brochure or a museum exhibit that relates to and identifies the historic significance of the contributing structure. The interpretive product shall be paid by the owner of the contributing structure and must meet interpretive standards as specifically designated by City Council resolution. All plans and schedules will be reviewed and considered by the Commission in conjunction with its review of a certificate of appropriateness.

(1) In the event an owner occupies multiple contributing structures with a single commercial use, the owner shall be required to provide an interpretive product for each rated structure.

(2) Exception: Any contributing structure that already provides an interpretive product shall be exempt from this requirement.

(3) Exception: Nothing herein shall require an interpretive product for those exceptions identified in Subsection (a), Paragraphs (1) through (5) above, or for administrative approvals under Section 16-11-150 of this Article, Administrative approvals for paint colors and roofing materials.

(4) The City will develop (or will hire a contractor to develop) an overall interpretation plan, approved by City Council resolution, incorporating concepts for interpretive signs throughout the City and along any bike path established along the Central City Parkway corridor. The plan will include themes that can be used on permanent installations, temporary signs, in brochures and in other documents or publications. (Prior code 16-295)

Sec. 16-11-60. Demolition.

Upon receipt of an application for a certificate of appropriateness for demolition, the Commission shall make a determination supported by written findings whether one (1) or more criteria of this Section are met. If the Commission determines that one (1) or more of these criteria are met, a certificate of appropriateness for demolition shall be denied:

(1) The structure is of interest or quality that would reasonably meet national, state or local criteria for designation as an historic landmark;

(2) The structure is an integral part of an historic district and would detract from that district by its removal; and

(3) The structure is of unusual or uncommon design, texture or materials that could not be reproduced, or be reproduced only with unreasonable difficulty and expense. (Prior code 16-296)

Sec. 16-11-70. Compliance with other regulations.

The Commission will consider the City's zoning, subdivision or other land use regulations, to the extent possible, during the historic and architectural review. (Prior code 16-297)

Sec. 16-11-80. Limitations of review.

(a) The Commission shall not design or assist in the design of any project submitted. Creative approaches to preservation and innovation in methods are encouraged. It is not the intent of this Article to stifle or restrict individual expression.

(b) In an effort to improve the quality of a design and maintain and enhance the historic integrity of existing structures, the Commission shall consider the cost of the project, but considerations of cost shall not override the objectives of this Article. (Prior code 16-298)

Sec. 16-11-90. Application procedure.

(a) Stages of inquiry. The applicant and/or his or her architect or designer shall meet with the Historic Preservation Administrator prior to filing an application in order to obtain information and the general guidelines. A large and complex project may require a longer review period with intermediate steps of approval, while smaller, simpler projects may require only one (1) submittal and a short review period. The applicant may request that the Commission grant a preliminary approval for all or part of the proposed project. However, a certificate of appropriateness shall only be granted after approval of the final plans.

(b) Application requirements. The applicant shall submit to the Historic Preservation Administrator an application, ten (10) sets of plans and a filing fee, the amount of which shall be established by resolution of the City Council. In addition to the filing fee, the applicant shall be required to pay for any unique costs incurred by the Commission relative to plan evaluation. An exception to the submission of a filing fee shall be made for an application for a certificate of appropriateness for painting or repainting. In this case, no fee shall be required. Plans shall be submitted at least fourteen (14) days prior to a regular or special meeting of the Commission to consider the application.

(c) Plans shall include:

(1) Photographs of the existing structure and site, showing all sides of a structure and the street where the structure is located; and

(2) A site plan on a sheet 24" x 36" and drawn at a scale $\frac{1}{8}" = 1'$ including:

a. The layout of the entire project and its relation to surrounding properties and existing buildings thereon;

b. The location of points of entry and exit of motor vehicles, the circulation pattern and parking;

c. Preliminary building plans which show existing structure at a scale of $\frac{1}{8}" = 1'$;

d. Type and color of all exterior materials, including samples of the materials and paint chips;

e. A statement describing the scope of the project, the design intentions and the project's visual impact on its surroundings;

f. A map indicating the existing topography and any proposed grade changes; and

g. All changes to the site, including but not limited to: landscaping, walls, fences, exterior lighting and the type and placement of signs. (Prior code 16-299)

Sec. 16-11-100. Waiving of requirements; requiring additional information.

The Commission, upon majority vote, may waive any of the requirements in Section 16-11-90 above. Also, the Commission may require additional information deemed necessary to enable the Commission to reach an informed decision. (Prior code 16-300)

Sec. 16-11-110. Time limitations for motion on applications.

The Commission shall conduct the review and approve or disapprove within thirty (30) days after the hearing on the application. The Commission shall submit, in writing, its decision to the Building Inspector and the applicant and, if approved, a certificate of appropriateness. (Prior code 16-301)

Sec. 16-11-120. Modifications of applications.

The Commission may recommend that a certificate of appropriateness not be granted, and advise the applicant of changes which would enable approval by the Commission. The Commission may delay denial of the certificate of appropriateness not to exceed thirty (30) days in order for the applicant to accept such proposed changes. During the thirty-day period, the applicant may accept the proposed changes. If, after said thirty-day period, the applicant and the Commission are unable to agree on changes that would result in the granting of a certificate of appropriateness, the Commission, at a regular meeting, shall review the proposed changes and by resolution accept or deny the request. A denial shall be in writing and shall set forth the reasons and criteria for the denial. The decision shall be based upon the standards and design guidelines of the City and the provisions for this Article. (Prior code 16-302)

Sec. 16-11-130. Emergency aspects.

At its discretion, the Commission may schedule special meetings to render a decision in a timely manner. (Prior code 16-303)

Sec. 16-11-140. Notice.

A special meeting may be called by the chairperson or a majority of the Commission members when a Historic District designation, historic landmark designation or boundary amendment is proposed. Notice of a special Commission meeting for these purposes shall be published in a newspaper of general circulation fifteen (15) days prior to the public hearing. (Prior code 16-304)

Sec. 16-11-150. Administrative approvals for paint colors and roofing materials and colors.

Applicants may apply to the Historic Preservation Official for administrative approval of proposed paint colors and roofing materials and colors. A certificate of appropriateness may be granted pursuant to this Section only for colors or roofing materials and colors included in a list that has been approved by the Commission. The Commission may further impose such additional requirements or guidelines as it deems necessary for the granting of administrative approvals pursuant to this Section.

Applicants who have been denied administrative approval may still apply to the Commission for approval. (Prior code 16-304.5)

Sec. 16-11-160. Expiration of certificate of appropriateness.

A certificate of appropriateness shall expire twelve (12) months after issuance unless a building permit has been issued. (Prior code 16-305)

Sec. 16-11-170. Amended plans.

To amend plans granted a certificate of appropriateness, the applicant must determine that unforeseen circumstances will require a change in the plans. The applicant shall inform the Commission and the Building Inspector and submit a description of the changes necessary to evaluate the proposed changes. The Commission shall act on the proposed changes at the next scheduled Commission meeting, or at a special meeting if the chairperson determines that a special meeting is required. If the proposed changes are of a minor nature and do not affect the exterior appearance of the structure, the Historical Preservation Administrator may authorize the change in writing. (Prior code 16-306)

Sec. 16-11-180. Appeal for denial of application.

If the Commission denies an application or approves with conditions the applicant feels are unacceptable, the applicant shall have the right to appeal to the City Council. (Prior code 16-307)

Sec. 16-11-190. Appeal filing procedure.

Appeals by the applicant must be filed with the City Clerk within thirty (30) days of the Commission's decision. Each appeal shall be accompanied by an appeal fee, the amount of which shall be established by resolution of the City Council. (Prior code 16-308)

Sec. 16-11-200. Basis of appeal.

The basis of appeal shall include but is not limited to:

- (1) Failure of the Commission to comply with the purposes and objectives defined in this Article;
- (2) Undue interference with the design integrity of the proposal;
- (3) Economic hardship;
- (4) Considerations by the Commission of irrelevant information; and
- (5) Prohibition or unwarranted restriction of building type, material or method. prior code 16-309)

Sec. 16-11-210. Appeal hearings.

The City Council shall hear and decide any appeals within thirty (30) days of filing. The City Council may affirm, affirm with conditions or reverse the Commission's decision. (Prior code 16-310)

Sec. 16-11-220. Penalties.

A violation of any Section of this Article shall be subject to the following penalties:

(1) Any construction, erection, remodeling or repair without a certificate of appropriateness shall be ordered to cease by the Building Inspector and may not continue or begin again without the necessary approvals outlined in this Article.

(2) In the case of demolition without a certificate of appropriateness, the owner shall be required to:

a. Repair or reconstruct the structure to its condition prior to the demolition activity; or

b. Obtain Historic Preservation Commission approval to remodel, repair or demolish subject to conditions contained in a certificate of appropriateness.

(3) In addition to the requirements of Paragraph (2) above, the owner of any building or premises or part thereof where anything in violation of this Article exists or is placed or maintained, any architect, builder or contractor who assists in the commission of any such violation, and all persons who violate or maintain any violation of any of the provisions of this Article, who fail to comply therewith or with any requirements thereof or who build in violation of any statement or plan submitted and approved hereunder, for each and every violation or noncompliance, shall be punished as set forth in Section 1-4-20 of this Code. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Article is committed, continued or permitted by any such person, and such person shall be punished accordingly. (Prior code 16-311)

ARTICLE XII

Ridgeline Development Overlay District

Sec. 16-12-10. Intent.

Within the corporate limits of the City, there are many significant landforms including areas with distinct ridgelines, usually at higher elevations. The City Council has recognized that these topographical features constitute a unique natural resource deserving of protection and preservation and that construction of structures in locations on these landforms which are visible from many areas of the City degrades this natural heritage. (Prior code 16-331)

Sec. 16-12-20. Purpose.

The purpose of this Article is to preserve and maintain the City's scenic aesthetic resources as viewed from certain roadway corridors that are important to the character of the City. These regulations are intended to provide for specific areas within the City where new development shall be reviewed and constructed to maintain and preserve the natural appearance of the mountain skyline by avoiding penetration or interruption of the natural skyline. At the same time, these regulations recognize pre-existing development rights vested under law and the need to site public facilities at locations optimizing their effectiveness. (Prior code 16-332)

Sec. 16-12-30. Overlay District established.

The Ridgeline Development Overlay District is hereby established as an overlay district that includes within its boundaries the area designated on the Ridgeline Map on file with the City Clerk and as adopted on the Official Zoning Map. The provisions of this Article shall apply to applications for building permit, zoning, subdivision (preliminary plat, final plat, replat, minor plat), planned unit development, special review uses and certificates of appropriateness for properties located within the Ridgeline Development Overlay District. The application of these regulations is in addition to the regulations of the underlying zoning district and of this Code and shall be considered by the appropriate decision-maker in conjunction with the underlying application for development. (Prior code 16-333)

Sec. 16-12-40. Exemptions.

These following developments shall be exempt from this Article:

- (1) Development that has been previously approved through the building permit, subdivision, planned unit development, special use permit, vested development rights or historic preservation (certificate of appropriateness) process prior to August 1, 2007.
- (2) Public utility facilities where no other feasible and prudent alternative site exists as determined by the City Council.
- (3) Development that can demonstrate historical precedence by construction of a structure that mimics what used to exist historically, during the Period of Significance (1874—1917), on the same site. (Prior code 16-334)

Sec. 16-12-50. General provisions.

(a) The following standards shall apply to all development subject to this Article:

- (1) The proposed development, where feasible, shall minimize potential visual impacts by utilizing existing topography and natural vegetation; however, no part of any building shall silhouette the skyline at any time of year. See Figure A below.
- (2) The height and bulk of the proposed development shall be designed to avoid the silhouetting of buildings from ridgelines. Mitigation techniques may include, but not be limited to

either distributing the structural mass into a series of smaller forms, or utilizing stepped rooflines. See Figure A below.

(3) More restrictive minimum structural setbacks and/or maximum building heights (heights less than normally permitted in an underlying zone district) may be necessary to preserve public views of the identified ridgelines, as determined by a site-specific visual analysis.

(4) The location of any structure on a building site should be set back an adequate distance from the edge of the ridge or elevated point so as to minimize the visual impact. In no case shall a structure protrude above the crest of a designated ridgeline by more than one (1) story and a maximum of twenty-five (25) feet for any side of the structure which is visible on the ridgeline. The requirement may be waived where the relationship and height of existing mature trees adjacent to the proposed structure minimize the impact of the structure on the ridgeline.

(5) Exterior siding and roofing materials shall be nonreflective and shall be of colors that are subtle and muted which would not conflict with the natural surrounding terrain and vegetation. The use of bright white or light pastel colors should be limited only to trim and accent features of the structure. For example, colors with a muted tone, brown or gray cast are acceptable primary building colors, whereas light or bright colors such as white, light blue, yellow or lime green would not be acceptable for primary building color.

(6) Exterior lighting shall be directed, sited and shielded in such a manner that the light source is not directly visible from adjacent properties and the affected ridgelines.

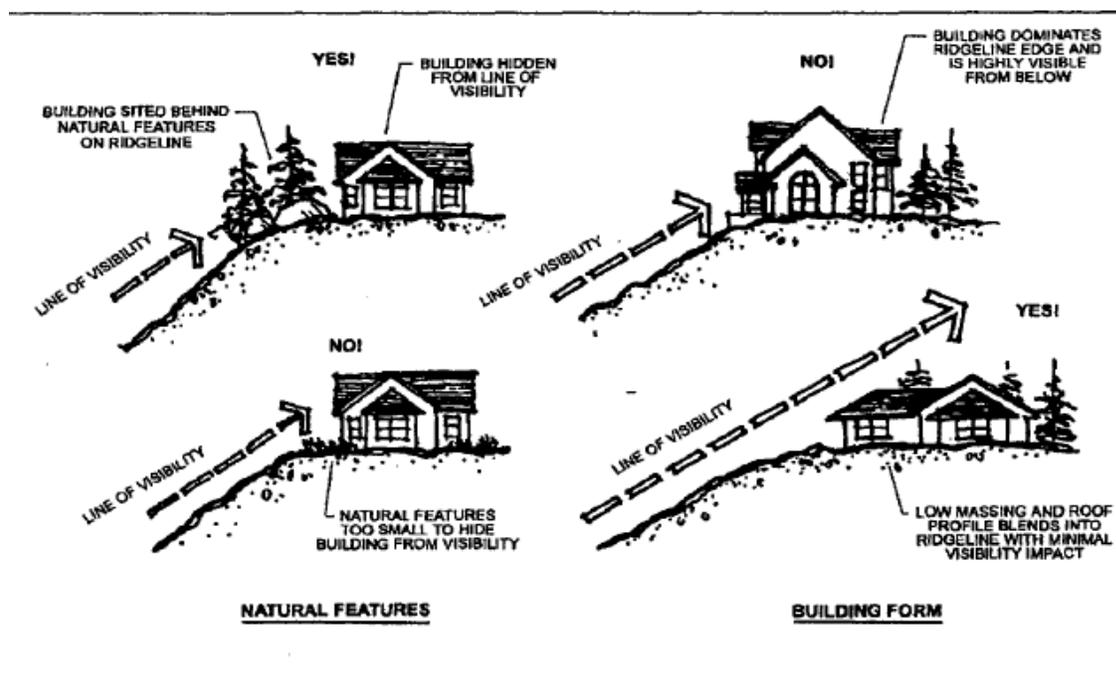


Figure A

(Prior code 16-335)

Sec. 16-12-60. Application requirements.

(a) An application for development, as defined in Section 16-12-30 of this Article, of property located within the Overlay District, in addition to any other requirements imposed by this Chapter, shall provide the following information:

(1) Visual analysis. A visual analysis to illustrate the anticipated visual effect of the proposed development. The visual analysis shall provide illustrations of the mass and form of the proposed development in the context of existing features of the site. The visual analysis may be presented in the form of a photograph onto which the proposed development has been rendered; a computer simulation; architectural site section; or other similar visual display technique, as approved by the City.

(2) Map. A map locating proposed roads and utilities and identifying the area proposed for development.

(3) Written statement. A written statement explaining where the development is proposed to be located in relation to the ridgeline areas and how the development mitigates visual impacts on affected ridgelines.

(b) In addition to the foregoing application requirements, the following additional information shall be required at the time of submittal of a final development plan of a planned unit development or final plat:

(1) Mitigation controls. Proposed mitigation measures, including but not limited to one (1) or more of the following:

a. Structural finish materials and colors: Statements or samples describing the materials and colors proposed to be used in all structures;

b. Height limitations which may be more restrictive than the maximum building height allowed by the governing zone district allows;

c. Proposed building envelopes;

d. Natural and proposed landscaping for the purpose of screening and preserving the protected ridgelines; and

e. Other mitigation controls to prevent impacts to the ridgeline.

(2) Plans. Submission of grading, landscaping and lighting plans in a form acceptable to the City. (Prior code 16-336)

Sec. 16-12-70. Criteria for approval.

The following criteria, as applicable, shall be considered in reviewing applications for development of property located within the Ridgeline Development Overlay District:

(1) That the development being proposed is consistent in all respects with the spirit and intent of this Article and this Chapter, and that it would not be contrary to the general welfare and economic prosperity of the City or the immediate neighborhood;

(2) That such development has, to the extent possible, adequately demonstrated that the development has minimized its visual impact to the affected ridgeline; and

(3) That external effects of the proposed development are controlled, considering compatibility of land use, including arrangement of lighting devices, and exterior treatment of the development (including building façade and landscaping) so as to prevent the occurrence of visual nuisance, together with other factors deemed to affect public health, welfare, safety and convenience. (Prior code 16-337)